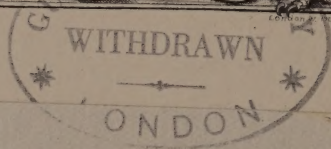


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AN ANALYSIS
OF
MEDICAL EVIDENCE:
COMPRISING
DIRECTIONS FOR PRACTITIONERS,
IN THE VIEW OF BECOMING
WITNESSES IN COURTS OF JUSTICE;
AND AN
APPENDIX
OF
PROFESSIONAL TESTIMONY.

BY
JOHN GORDON SMITH, M.D.

LONDON:
PRINTED FOR THOMAS AND GEORGE UNDERWOOD,
FLEET STREET.

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ANALYSIS

MEDICAL EVIDENCE

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DIRECTIONS FOR PRACTITIONERS

IN THE VIEW OF RECORDING

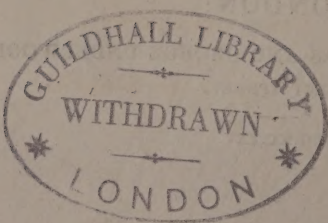
WITNESSES IN COURTS OF JUSTICE

LONDON:

PRINTED BY J. MOYES, BOUVERIE STREET.

APPENDIX

PROFESSIONAL TESTIMONY



TO
JOHN AYRTON PARIS, M.D. F.R.S. F.L.S.

FELLOW OF THE ROYAL COLLEGE OF PHYSICIANS,

ETC. ETC.

MY DEAR SIR,

ONE of our celebrated writers has recorded the opinion—that medical authors are inexcusable, if they solicit any other patronage than that of professional merit. Prompted by this feeling, I might have been at a loss to find an approved judge of the novel pretensions of this volume, had not your distinguished labours in the department of science to which it claims alliance, pointed out the proper person.

By inscribing it to you, I afford myself a gratifying and appropriate opportunity of expressing private regard, and of bearing public testimony to the felicitous application of your eminent talents to an object that we agree in considering of the greatest importance—the cultivation of POLITICAL MEDICINE.

Believe me,

My dear SIR,

Yours very sincerely,

J. G. SMITH.

Brompton, Jan. 1, 1825.

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CORRIGENDA.

- Page 43, line 14, *for* "taste," *read* "tact."
- 82, — 8, *for* "considered," *read* "counselled."
- 85, note, *for* "chap." *read* "vol."
- 86, note, *for* "exhortating," *read* "exhorting."
- 140, line 12, *for* "practise," *read* "perform."
- 165, — 8 from bottom, *for* "Ammaninus," *read* "Amannus."
- 170, — 14, *for* "causa," *read* "causo."
- 190, — 14, *for* "knew," *read* "know."
- 213, — 21, *for* "days," *read* "hours."
- 233, — 6 from bottom, *for* "three," *read* "four."
- 267, — 5 from bottom, *for* "Stairdert," *read* "Standert."
- 279, — 22, *for* "streams," *read* "steams."
- 367, — 6 from bottom, *for* "English," *read* "the present English version."
- 368, — 18, *for* "breast," *read* "breasts."

PREFACE.

THIS is the first of several distinct works, which I have projected, on particular subjects, belonging to Forensic Medicine. Whatever may be said of that branch of science, as a study, among us, it is admitted that, as a department of Medical literature, it has with rapidity attained even high rank — so far as general, or elementary writings are concerned. Though neither the earliest, nor the most elaborate of those authors, to whom the literary administration of the Medical world has been pleased to express their acknowledgments, and on whom they have bestowed a very liberal share of approbation, I pretend not to conceal, that the opinion in question has afforded me no small satisfaction.

I am fully persuaded, however, that with works of this nature we are amply furnished, and, for some time, shall do well without more of similar pretensions; having choice sufficient for the gratification of different tastes, for the supply of various wants, for the correction, animation, and (as the fact happily is) the corroboration of each other. I conceive, therefore, that the duty of those who

may be inclined, henceforth, to assist us with their labours, will be more satisfactorily, and more advantageously discharged, by concentrating their powers upon individual topics. If this be done, it requires but moderate foresight, and no prophetic power to predict, that the Legal Medicine of Great Britain will speedily take rank with that of any other country. The medical jurist, possessing a competent knowledge of the history of the science, will appreciate how much is here said in its behalf.

In the following pages, I have endeavoured to excite the attention of my professional brethren to one of the most urgent and important subjects within the whole range; and I am not without hope that some help may be obtained by those who are desirous of forming their own ideas, and estimating, for themselves, the claims of a hitherto neglected duty. I would add, that its elucidation has, till now, been unattempted; but, in doing so, I must not be understood in a strictly literal sense, for it has received a slight share of attention from my learned and able cotemporaries, the authors of "Medical Jurisprudence;" and I have ventured on a few crude remarks concerning it, in the conclusion of the late edition of "The Principles of Forensic Medicine." Beyond these, however, I have met with nothing in an embodied form, and it will be seen that the materials derived from them, in the execution of the present undertaking, are by no means copious.

Producing a work, however humble in itself,

of no small importance, if we properly appreciate its object, and deriving "its form and pressure" chiefly from one's own reflexions, may be considered somewhat presumptuous. To produce a masterly performance was beyond my ambition — an assertion, which the sequel will sufficiently bear out; but I will maintain that, although the title of my subject may raise a doubt in some minds as to the propriety of a medical writer discussing questions of *evidence*, there can be none in his drawing the attention even of those within whose province that most important matter does unquestionably lie, to its peculiarities when connected with Medical bearings. But, with reference to the enterprise, the very important inquiry might arise in the outset — is this the product of judgment or of fancy? To the latter faculty, I have little fear of its being assigned; but I am not without solicitude, as to the *quality* of the former, which it may, by competent judges, be considered to indicate.

I doubt not that I shall be severely criticised, and probably by two sorts of artists — those who are medical, and those who are not. To the latter, it might be unwise to address any observations. From past experience I have no real cause of complaint; and to the majority of my extra-professional reviewers, I should acknowledge a debt of obligation, were it allowable to suppose that what they may have written of a nature favourable to me, as an author, could have been dictated by any motive but a sense

of duty. As to a solitary exception, I shall content myself by repeating the sentiment of more competent judges — that the absurdity of the performance, and ignorance of the subject, displayed by the performer, are worthy of the spirit in which it was executed.

To those of the Profession, whose duty it may become to pronounce judgment on the nature and merits of this volume, I would frankly submit, whether its novelty ought not to operate in my favour — especially if it should so happen that they may not have had occasion to occupy themselves with the subject, until the task of *analysing* this Analysis shall have brought it before them: and, in reminding them of the distress it has been my aim to alleviate, I am almost tempted to urge the propriety of questioning themselves as to their personal liability to, or happy exemption from sufferings of the same nature. With this hint, I leave my reputation in their hands, and shall be grateful for any suggestions they may be pleased to favour me with, for future improvement.

To the critical community at large I would state, that it appears, at present, impossible to refer the medical witness to any help that the recorded experience, or results of studious consideration on the part of others, might afford, in lieu of what is here attempted. How far that attempt may supply, or be founded upon either of these, as regards myself, can be of little consequence to the accomplishment of my object. For

my own part, I do not conceive that the just claims of *experience* are, in every case, to be estimated according to the pretensions or declarations, or even self-persuasion of the individual—a position I have aimed at establishing in the sequel.

But there is, perhaps, something more formidable than even the severity of criticism to be anticipated—viz. dissatisfaction on the part of a few, who, by an habitual abstinence from the acquisition of new ideas, shew their disapprobation of adding to one's original stock of knowledge; and the displeasure of those who will imagine that they might furnish examples, in their own case, similar to some that I have exhibited for the warning of the Profession. To the former class it were useless to address any remarks, as they would not reach their destination. To the others, it may not be amiss to protest that, if I *had* brought them into notice for the purpose in question, I should have done them no *wrong*; having made use of no materials in that way, but such as were already published far and wide, and better known, probably, out of the Profession than in it. Upon this ground also, it would be impossible for me to accuse myself of doing *injury* to individuals: on the contrary, as they would thus have served a very useful purpose, they would have been entitled to the gratitude of their attentive brethren—at least I would assure them of my own. In that which a sense of duty has compelled me to do in this way, I trust I

have not made errors of judgment unnecessarily glaring. To such all men are liable, and one should consider well, ere he ventures to animadvert on those of his brethren. But, as errors in judgment are totally distinct, in their essential character, from deliberate neglect and wilful ignorance, (however inevitable as their consequences,) I have not felt it incumbent upon me to treat these with the same consideration. If in this respect I may give particular offence, I shall not hesitate to make such atonement as may be due, in whatever quarter a sufficient plea for the same shall be advanced.

The work is composed of two distinct parts: that which is more strictly original, and that which may, at first sight, appear to be little else than long and multifarious extracts, from sources of easy access. I might, perhaps, justly point to this portion of the volume as being the most important; while, in all probability, not a few may look upon it as the most interesting. I have to trouble the reader with a few prefatory remarks, with respect to both.

First, then, — in the text, or *Analysis*, strictly speaking, as well as in the Notes connected with it, forming the prior part of the Appendix, — my object has been to excite the Profession to think for themselves. I have attempted little more than a sketch; and it will be a fortunate circumstance if the result should prove that little or nothing more was wanted. It may not be

impertinent to expect something of greater consequence from other quarters. Even by converting the opinions I have hazarded, or modifying the inferences I have drawn, great benefit may accrue to the Profession, and I shall be among the foremost to acknowledge it. The basis of this part of the volume was originally put together, in a looser manner, to serve a public occasion, on which it was delivered *ex ore*; and owes its appearance in print, in great measure, to a request on the part of the body for whose use it was thus drawn up. In its present form it is a very different production; and, as the vote in question would have proved a *vox et præterea parvum*, had I published merely the *oration*, I look upon the work as unfettered with any claims on the part of my learned brethren of the Medical Society of London.

It was nearly prepared for the press, *in the first instance**, when a short but flattering notice of my work on *Forensic Medicine* appeared in the Edinburgh Medical and Surgical Journal, for July last, containing a gratifying and unexpected commendation of the concluding chapter on *Medical Evidence*. Such encouragement it is not often the fortune of an author to meet with in advance, and not to hail the incident as a favourable omen, would betray unnatural insensibility†.

* The note to page 44 will explain this allusion.

† No member of the Profession requires to be told, how highly and deservedly that journal is esteemed both at home and

After the admissions I have already made, it might be superfluous to acknowledge that I am aware of the existence of many defects. If it be asked, why I did not guard against them, perhaps it may be thought I should in honesty answer, that I was unable. But, with regard to some of them, and even of the most palpable, I will not wholly admit such a plea, but venture to say, that I might have supplied the *hiatus* in appearance, without doing so in reality. The display that every individual must make, in the situation under notice, is so strictly a matter of personal peculiarity, that it would have been difficult, perhaps, in exceeding the bounds within which I have restricted myself, to have avoided going too far. It would be impossible for the pen of man to write that which would deliver the timid, the nervous, or the bashful, from their particular infirmity. No instruction can convey the *habit*, or even the gift of addressing a public audience; no exhortations can impart boldness, or presence of mind, which, in such circumstances, the strongest intrinsic resolution is so often inadequate to afford; no precedents

abroad, not only as a magazine of professional science in general, but in a particular manner as an organ of authority in the medico-legal department. With regard to *Medical Evidence*, the writer of the article in question truly observes, that "its nature is very little understood, either by lawyers, or by physicians and surgeons; and we are likewise fully satisfied, that this ignorance of its nature is the chief cause why it still continues in so low a state, and is treated with so much contumely."

will endow with the faculty of answering the demands of a sudden and unforeseen emergency; nor can advice and exhortation imbue with wisdom and intelligence the foolish and the ignorant. But while, on the one hand, it is to be confessed that little direct help can be afforded, it may be affirmed, that even those who labour under such disadvantages ought to derive some benefit from a foreknowledge of the probable nature of the exhibition they may be called upon to make, and an acquaintance with what has been done in similar circumstances, whether worthy of imitation, or matter of warning: besides, diffidence, or even timidity, when arising from no cause beyond a natural infirmity, will always be treated with delicacy by considerate minds.

Should it be alleged, that in the Notes, &c., which form the first portion of the Appendix, I have indulged an excursive propensity, I do not think that the proper object of the work is in any instance lost sight of. The borrowed materials are of too much value to require apology for their appearance here. For the freedom that characterises certain passages of my own, I must endure an author's responsibility; but I see not, upon reconsideration, why I should have written otherwise: and, upon the whole, I do not think that I could have done so.

If I shall find an intelligent reader curious enough to make himself acquainted with the second part of the Appendix, it is not difficult to predict the impression he must receive, from viewing such a gallery of pictures as I have there hung up. For this I claim no merit: the public is welcome to consider it as mere mechanical labour, which any one else might have performed, and probably performed better. What I have inserted is (with slight exception) furnished by my own library, and has long been familiar to me; but I question whether it has been equally so to the Profession at large, although well calculated to arrest the attention of all thinking men, medical or not. Was it possible, I would ask, to be privy to such a history, and lament less loudly the want of attention that has prevailed with regard to the judicious application of medical science—to estimate lower the importance of that study—or to consider it less worthy of assiduous cultivation, than I have done?

Among other claims to notice which, perhaps, characterise this division of the volume, I would more especially advert to the peculiar importance and authenticity of the materials, as containing many opinions of eminent individuals, verified upon oath. In some instances these opinions may derive additional value, from being elsewhere inaccessible. In many places I have thought it my duty to point to erroneous statements, and I have not hesitated to animadvert, on a few occasions, to something of a more perverse cha-

racter than mere mistakes. I am persuaded, that a judicious prosecution of this species of research, might prove extremely useful to the Profession; and such an object I have in view, the result of which may be communicated, when greater attention shall be paid to the cultivation of Public Medicine. Had I gone farther than I have in the present instance ventured, a much greater number, and more remarkable specimens of failure in the duty of the medical witness, would have been at my service.

What would this prove — were an echo to the truth of the allegation wanting in the breast of every intelligent and candid member of the Profession — but that the attention of the medical community requires to be roused, and their ideas set in order concerning this branch of their duty? To the prior part of the task alone do I address myself; the residue must of necessity be the result of individual consideration and endeavour.

This part of the volume has been made subservient, not only to elucidate the statements, or (if the word be not pragmatical) the *doctrines* of the preceding text, but to serve the purpose of a Supplement to the “Principles of Forensic Medicine;” it having been impracticable to embody within the limits of that work so great a portion of illustration as, for the clearer elucidation of its didactic matter, would have been desirable. While this does not render the one production strictly necessary for a fair understanding of the other, and while, notwithstanding the references in ques-

tion, they retain the character of independent works, those who may possess both, will find it advantageous. On this account, I have arranged the subjects in the order of the "Principles;" one which I am not likely, in any material degree, to alter, after having seen it admitted, by competent judges, to be "perhaps the best hitherto proposed*." This is the rationale of the references scattered throughout the present volume, but more especially in the Appendix.

I have interspersed such explanatory observations, in the form of an occasional commentary, or of notes, as appeared necessary, either for duly understanding the force and allusion of the passages referred to—or for correcting matters imperfectly understood at the time of the occurrence, which the improvements of modern science have rendered intelligible, or otherwise materially altered—or where an opportunity occurred of giving a lesson of a practical nature, and sometimes of uttering a warning against the improper use of a dangerous example.

Confident, as I am, that Political Medicine is steadily and vigorously advancing to its proper elevation in our hemisphere, I may conclude, with expressing a sincere wish to lighten the labours, not only of the student and practitioner, but of the future author.

* Edin. Med. and Surg. Journal; where already quoted.

POSTSCRIPT.

THE elaborate work of Mr. STARKIE, on *The Law of Evidence*, &c., has reached me, at the close of my labours on the present occasion. Upon reference to the topics more especially connected with the subject matter of this volume, and which are in strict analogy to similar parts of those law books which I had previously consulted, I do not find much additional matter, or more that would suit my purpose, than I had already obtained from similar sources; while the result of my examination of this new work has been confirmatory of what I have here introduced.

ANALYSIS,

ETC.

AMID the copious provision made, long since, for the qualification of those who aspire to the medical character, it is somewhat paradoxical that no formal or authorised attention has yet been paid to certain matters, of the most important nature. This neglect might, truly, be termed preposterous, when it is considered, that in some of these matters, the practitioner endures an unremitting impulse to exercise himself, and that upon them his fame and fortune too commonly depend. He may combine the skill and attainments of Æsculapius, with the accomplishments of Apollo, but of themselves, these will not ensure him distinction. There is something in the superficial, or decorative part of his character, to which mankind, in

general, are more disposed to look, and by which they are exceedingly prone to estimate his claims. I allude to manners and deportment; to the social, as connected with the learned or ingenious man. This is an influence of the mightiest import; and upon no members of the great civilized family, does its pressure weigh more heavily than upon us. Other men can separate between their personal and professional character, themselves and their duties. They often walk into the exercise of these, as they would into a garden, where they follow a plain, an obvious, or even an inviting track; and when time suits, if not exactly when they please, they walk out again, and with their extragarments, may relieve themselves from the *burden* of compulsory observances, if custom has not, indeed, made them essential to their well-being, or perhaps even constituted them the very delights of life.

It is not so with us. Our dutiful observances are so intimately and inseparably amalgamated with our identity, that we are, practically, strangers to times and seasons; ever on the alert, unremittingly goaded by the stimulus of circumspection, but, at the same time, unprovided with the advantages of instruction, in regard even to our profes-

sional deportment in society, beyond the general application of technical means for the accomplishment of abstract purposes of art—beyond, I would say, the *business* of medicine.

And yet, to no class of men can the current coin of social intercourse be of more value; to few, placed in a sphere of corresponding dignity and importance, can it be of so much. What signifies, to the client, the urbanity of a sound and able lawyer, provided he applies the powers of his mind to the merits of the case, and discharges his duty towards the interests of one whom he may never see? Of what consequence is courtesy and kindliness of disposition, to the beneficed clergyman? His income cannot be diminished, nor his occupation dissipated, discharge his duties, or treat those around him as he will. But if we look at the physician, we see a member of society, whose active functions require to be discharged in a certain *manner*, otherwise he will exercise himself with but indifferent success, and probably lose opportunity of discharging them at all; with which he may forfeit his place in society, and his means of supporting existence. In short, the neglect of MEDICAL ETHICS is unaccountable.

Those who do imbibe any feelings, or acquire any rules of conduct, springing from an acquaintance with that important branch of medical economy, do so—not in the schools,—but amid the rubs and perplexities of life, under the tuition of that stern and unmitigating preceptor—*Necessity*.

Whether the relations of medical science to the exigencies of public justice, and other departments of state economy, may with propriety be ranked under the head of *Ethics*, I shall not stop to inquire*: but they have, in this country, been treated with similar neglect; whereby medicine has received much unjust reproach, and those who have been called from among her ranks, to apply those relations, have been unnecessarily lowered in the estimation of the world. I am far from insinuating that this has been the case without exception; but I fear not to assert, that the instances in which medical witnesses have come down from any judicial examination of importance, without suffering more or less injury, have not been many,—that those in which credit has been actually

* Dr. Percival has so ranked them in his delightful little work, entitled “*Medical Ethics*, or a Code of Institutes and Precepts, adapted to the Professional Conduct of Physicians and Surgeons,” &c.

gained, have been fewer still,—and that I know of no instance in which it can be satisfactorily shewn, that an individual reputation has been thereby established. Even now, after all that has at last been done among ourselves, to help the profession to ample means of rescuing its members and their science from this pitiful state, is there any object of dread, paramount, in the eye of the medical practitioner, to the *witness-box* ?

Things ought not to be so ; and almost any attempt to remove this blot from our escutcheon, should be looked upon with a favourable eye. Such an attempt is the present publication—in which I propose to take a free and candid view of the situation of a medical man, acting as a professional witness in courts of justice ; and in the execution of that task, I shall endeavour to convey some idea of the nature and importance of medical testimony—to examine more precisely than (as far as my knowledge and researches extend) has yet been attempted, into the obligations we lie under to discharge that duty, and the perplexities that surround it ; endeavouring to ascertain what are the most promising, or available means of removing them.

In the outset, it is not unfair to suppose that some may not perceive the degree of importance that belongs to the subject ; but those who have experienced an embarrassed appearance in a public court, and such as have that appearance in view, may find something applicable to their circumstances. If what is here submitted should have but the effect of exciting to the more successful cultivation of a topic, which probably seldom enters the mind until an occasion arises for grappling with it practically, my labour shall not be considered thrown away. How far fore-warning may be available, for the purpose of fore-arming, must be matter for consideration on the part of those to whom the warning is addressed.

CHAPTER I.

OF EVIDENCE.

WITNESSES in general, and medical witnesses among others, have little direct business, either with the law or practice of evidence. They do not *conduct* their own testimony, and therefore the responsibility as to its propriety, does not rest with them. If, in these respects, they actually go astray, the fault ought to be charged against the court, or examining counsel; for, if things be properly conducted, the slightest manifestation, on the part of the witness, to wander into irregularity, will be promptly checked. In fact, the witness in a British court, may be compared to a harnessed horse, in the hands of a vigilant and able driver, who will keep him in a direction parallel to the road side, and neither urge him too fast, nor permit him to loiter; while the slightest deviation from the proper track and pace,

will be instantly corrected. He cannot well get out of the right course without blame to the driver, and should he manifest a pertinacious inclination to go astray, correction will necessarily be extended to chastisement.

Nevertheless, it cannot be idle on the part of the medical practitioner, to acquire some knowledge of the manner in which he is to perform one of the most important, and most embarrassing duties to which he is liable to be called. It is the characteristic of Britons, at least of all those who have any pretensions to intelligence, that they do possess some knowledge of their municipal and political relations to the state—of their social, as well as individual rights and privileges. They also possess, or should possess, an acquaintance with the nature of their civic duties.

The testimony which the professional witness may be called upon to give, is necessarily matter of grave consideration in many instances ; and, I would add, must often be delivered under needless embarrassment, because the consideration of the nature and economy of evidence is prevalently neglected. Perhaps the body of medical practitioners is less intelligent on points of that

nature, than their fellow-citizens of corresponding rank, from the circumstance of their not serving on juries. "The law of England," says a jurisconsult, "has committed the power of estimating the weight and credit of the testimony to twelve persons, indifferently chosen from among the people, and sworn to decide according to the evidence which is laid before them*." Now, although these persons may be as void of legal knowledge as any twelve of the medical profession, yet we cannot imagine, and indeed the truth of the matter will not allow us to suppose, that the householders of England, who are accustomed to serve the office of jurors, do not appreciate the importance of testimony, or have not some acquaintance with its practical application; whatever direction and assistance they may require from the lawyer, as to its legal bearings, or particular connexion with particular occasions.

The author now quoted, goes on to remark, that rules have been found necessary for the direction of juries in certain cases, with regard to the import of evidence; that these rules are founded on general principles of reason, to which the understanding of

* Mr. Serjeant Peake, on the Law of Evidence, page i.

every man must immediately assent ; but that they may be considered as settled rules of *law*, depending on authority; and, as such, are the peculiar study of those whose profession it is to assist in the administration of justice*. Far indeed is it from my purpose, to trespass on the province of the juriconsult: with the law of evidence I presume not to meddle: but I am convinced that I may be of some use to the members of my own profession, if they will pay a little attention to what I think within the province of a medico-legal writer to submit concerning its economy, and such considerations connected therewith, as apply to the medical practitioner, in the situation of a witness.

All therefore, that I propose, in the present chapter, is to bring together a few remarks on evidence, with the view of applying them to that species of *scientific* testimony, which is the subject matter of the book. It is unfortunate for us, and I must confess that it has struck me as a defect in law-books, that so little of a nature applicable to our purpose, is to be found in them. It is manifest, from the discrepancies that have ever

* Peake, ubi *suprà*.

prevailed among medical witnesses, (without reproach to moral character), that the general rules of evidence are not readily, or copiously applicable to this particular species.

A few words may be offered as to Evidence, in the abstract or philosophical sense. What may be evidence in logic, may not be so in law. Nothing of the sort in law is intuitive—nothing is *self*-evident—every thing must go through the process of proof by testimony. Thus, there may be things as evident as that the sun shines on him who reads this chapter at noon-day ; but some of these things would require testimony to satisfy a court as to their certainty. We shall suppose a case, very unlikely to happen, but still sufficiently compatible with the nature of things, to be resorted to for illustration: we shall suppose that twelve persons, who have seen one man chop another man's head off, are appointed, and permitted without challenge, to try the murderer; in other words, that they compose the jury who are to decide whether the allegation be, or be not matter of fact. They are all privy to the truth of the charge, all perhaps, acquainted with the circumstances of the transaction: but they cannot, or perhaps it would

be more sensible to say that they ought not, to decide from such knowledge; they must put every thing out of view beyond the statements that have been made by sworn witnesses, and cannot use these statements any farther than they have been acknowledged, by the court, to be pertinent to the question at issue. The case thus put is certainly imaginary, but we every now and then meet with a very near approach to it. Events calling for judiciary investigation, frequently take place under circumstances of such notoriety, that it must be impossible to find a jury, to some of whom the details are not well known at the time they proceed to discharge their duty. Accordingly, nothing is more common than for a judge to desire them to forget, or at least to put out of view, any thing they may have *heard*, beyond the evidence on the trial. It is no great stretch of imagination, to suppose such a caution extended to what may have been *seen*.

Is there a distinction between evidence and testimony? Let us advert, for a moment, to the explanations that have been assigned to these terms.

“Evidence is a quality in things, whereby they become visible and apparent to the eyes, either of the body or the mind.” It is

“ the essential and infallible character or criterion of truth, and is that in effect, which with us constitutes truth.—It must be allowed the mark of truth, and those things must be allowed true, which carry with them such a degree of evidence as obliges us to assent to them. A thing is said to be *morally evident*, so far as we have a distinct notion or knowledge thereof, by unexceptionable witnesses*.”

Testimony is the mere delivery of evidence; the form in which the latter is furnished, or the amount of the evidence given or received. The terms, though not strictly synonymous, have no *specific* difference as to their import. Testimony has been thus defined:—“ A serious intimation from another of any fact or observation as being what he remembers to have seen, or heard, or experienced*.”

Thus, evidence is necessarily composed of testimony; but testimony may not amount to evidence; it cannot be considered so until it is approved and applied. “ Evidence, in law, is any proof, whether *by testimony* of men on oath, or by writings and records. It is thus called because the point at issue is thereby made evident to the

* Campbell's Philosophy of Rhetoric.

jury*.” It follows then that a witness may offer testimony which is not evidence. He may, for example, declare a truth; but should he declare that the knowledge he possesses of the thing (fact in itself) was acquired from the information of another person, even though that person’s word should be known to be, and currently received as, more satisfactory “than many men’s oath,” it would not be considered, *under ordinary circumstances*, as evidence. But should a person of very questionable pretensions to integrity, come forward and swear that he *saw* the circumstance take place, such a statement would be received as proof†.

Having complained of the want of in-

* Rees’s Cyclopædia. Art. EVIDENCE.

† “When we cannot see or hear any thing ourselves, and yet are obliged to make a judgment of it, we must see and hear by report from others; which is one step farther from *demonstration*, which is founded on the view of our own senses; and yet there is that faith and credit to be given to the honesty and integrity of credible and disinterested witnesses, attesting any fact under the solemnities and obligations of religion, and the dangers and penalties of perjury, that the mind equally acquiesces therein, as on a knowledge by demonstration; for it cannot have any more reason to be doubted, than if we ourselves had heard and seen it; and this is the original of trials, and all manner of evidence.”—*Gilbert, Law of Evidence.*

struction on medical evidence which characterizes law books*; I must in justice add that the complaint is, if possible, still more called for against those which have been penned expressly for the purpose of instructing us in the discharge of our medico-forensic duties. There are many hundred such volumes in existence, but not one that I know of, which, in this respect, will assist the British practitioner. If we have recourse to Paul Zacchias, a name much invoked by subsequent and even recent writers—a name however that no medical jurist can mention without respect—we shall find a great deal about witnesses and testimony, it is true, but little indeed to help us in our present need. The remark will apply to many other writers of the same period, who abound in chapters relating to medical testimony; but contain nothing relevant to our purpose, here in England.† According to our practice, the witness must personally attend, and submit to interrogations, which, with his replies, are

* Let it be distinctly understood that I am speaking as a *medical man*, not conversant with the lore of Westminster Hall; having experienced disappointment in searching a few volumes, that (I was given to understand) are considered the best publications on the Law of Evidence.

† See Appendix, Part I.

given, *vivâ voce*, in the presence of the parties concerned in the issue, their advocates, agents, judges, &c.; not to mention an audience, and short-hand writers, more important than all the others, as being the organs of promulgation to the four quarters of the world. But, although at one time this mode of testifying was practised among the Romans, the civil law does not countenance the personal appearance of witnesses, and this may account for the practice just alluded to, on the part of continental writers. They take sufficient pains, it must be allowed, to instruct the profession in the formalities of giving their statements and opinions; but all that they aim at is to furnish the means of making *written reports*, which in this country are very rarely required. When such are to be furnished, the form, if that of a simple statement or certificate, is entirely at the option of the writer; and if a document called an affidavit be required, it must be prepared by a professional person, conversant with the proper formalities. In short, it is the business of a lawyer to draw it up, and to embody the essential information, in a manner consistent with the rule and practice of the courts.

In the next chapter, I shall be able to shew in what way medical men are liable to be called upon as witnesses, on many occasions, when their evidence would not be in request, if they were not medical men. At present, I shall restrict myself to bringing under notice the opinion of lawyers, with regard to scientific witnesses. Witnesses in general, can speak to *facts* only; but in matters of science, *opinions* may be received as evidence*: and this latitude is extended beyond *medical* opinions. Thus, persons accustomed to inspect hand-writings are called to give their opinions in cases of suspected forgery; ship-builders to pronounce on the condition of a vessel that has been surveyed by others; and medical men themselves are sometimes required to give opinions on the state of a patient whom they have not seen, having merely heard an account of his situation from others.

Still such opinions are not evidence unless given *upon oath*. If we consider the very lax manner in which people put forth what are called opinions under ordinary circumstances, and the pertinacity with which they

* Phillips on the Law of Evidence, i. 375.
Peake, 195.

will maintain them by arguments of all sorts even those *ad hominem*, at the very sword's point, or in 'the pistol's mouth,' we might be warranted in supposing it affectation to demand the security of an oath with regard to an *opinion*, did we not know that to shed one's blood in defence of an 'opinion' is one thing, and to take an oath that it is indeed one's opinion, without entering farther into the question of its connexion with truth, is altogether another. The simple question from the lawyer in a wig, "Upon your oath, Sir, is that your opinion?" would strike dismay into the breast of many, who at the convivial board, for instance, would challenge the same lawyer to the field, if he were to question the truth of any thing they might choose to fabricate. In the Forum, even an opinion, therefore, must be the offspring of belief—the truth as far as the witness knows it, or is persuaded that he knows it.

Although I am professedly, and may indeed be considered exclusively addressing the medical world, it does not follow that I should restrict the applicability of my observations to those who are members of the Established Church of England, or even to Protestants—nay, I would be of service to

those who are not Christians*. I think it therefore my duty to insert a remark or two on the form of swearing. "With regard to the ceremony or form of administering an oath," says Phillips, "that form is obviously the best which most clearly conveys the meaning of the oath, and most forcibly expresses its obligation. And since this is not an essential part of the oath, but entirely of human institution, and has varied in different times and countries, though the substance of the oath must be the same in all, it is obviously necessary to allow all men to swear according to the peculiar ceremony of their religion; that is, in the manner which they consider binding on their conscience†." Not to mention the modes of entering into a solemn engagement to speak the truth, among those who, in all probability, will never furnish our courts with *medical* witnesses‡, it is enough to observe that Jews cover their

* I had the honour to be capped M. D. by the side of a candidate, whose family belonged to the expectants of the Messiah.

† Law of Evidence.

‡ "A Gentoo touches with his hand the foot of a Brahmin. Mahometans are sworn upon the Koran."—*Phillips*.

heads, and swear upon the Pentateuch; those of the Roman, and Reformed Episcopal persuasions, lay the right hand upon the Gospels, and kiss the book,—an example *generally* followed in England by Dissenters*. Among these, however, there is a respectable and estimable sect, whose solemn affirmation is received instead of an oath, as they hold our Saviour's injunction as to swearing, to be binding in the strictest literal sense†. I need hardly say that I allude to the Society of Friends, or Quakers, amongst whom have been ranked, and from whom we shall probably continue to derive, some of the most estimable members of the profession.

In Scotland, the form of swearing is solemn and impressive, beyond what we can conceive, from the brief and flippant fashion

* “Infidels cannot be witnesses, *i. e.* such as profess no religion that can bind their consciences to speak truth; but when any person professes a religion that will be a tie upon him, he shall be admitted as a witness, and sworn according to the ceremonies of his own religion; for it would be ridiculous to swear a witness upon the Holy Evangelists, who did not believe those writings to be sacred.” *Law of Evidence*, by an anonymous author, published 1739.

† St. Matthew, chap. v. ver. 34, &c.

of imposing this obligation by a police officer, or crier in an English court. The oath is administered by the judge, while the witness, holding up his right hand, repeats it verbatim after him; and strict Presbyterians, in England, sometimes object to be sworn in any other manner*.

Although the Quakers are not *now* subject to penalties for refusing to take an oath, yet by an inconvenient and inconsistent distinction in the law still in force, their affirmation is not receivable as evidence, in certain criminal cases, unless in their own defence†. It might appear altogether useless to advert to the possibility of other persons refusing to be sworn; but a case of this nature very lately occurred on a trial for murder, before the High Court of Justiciary at Edinburgh. One of the witnesses, (who seems to have been somewhat below par in the scale of good manners and common sense,) chose rather to go to prison, in the first instance, than take

* The formula of this solemn appeal is given in the Appendix, Part I.

† Phillips. See the report of the *Oldham inquest*, Appendix, Part II.

the oath. Of this, however, he speedily repented, and behaved like other people afterwards. For such conduct, before an English tribunal, the witness would, of course, be subjected to the penalties attending a contempt of court. Finally, as to this point, "If the witness says he considers the oath to be binding upon his conscience, he affirms, in effect, that in taking that oath, he has called his God to witness. Such an acceptance of the oath, not only imposes upon the witness all its religious obligations; but, should he violate its sanctions, subjects him also to the temporal penalties consequent on the crime of perjury*."

I find that I cannot go at greater length, here, into the subject of evidence, as required from medical witnesses, without anticipating certain things, that will be stated with more propriety, and perhaps with greater effect, in the sequel. There is one very important point, however, connected with the nature of evidence, as likely, in a particular manner to be offered, or required on the part of medical men, to which I must

* Phillips.

now advert. Although hearsay be not evidence*, there is an exception in the case of dying declarations, which “are constantly admitted in criminal prosecutions, when the death of the deceased furnishes the ground of accusation. The principle of this exception to the general rule is founded, partly on the awful situation of the dying person, which is considered to be as powerful over his conscience as the obligation of an oath; and partly on the supposed absence of interest, on the verge of the next world, which dispenses with the necessity of cross-examination. But before such declarations can be admitted in evidence against a prisoner, it must be satisfactorily proved that the deceased, at the time of making them, was conscious of his danger, and had given up all hope of his recovery†.” In such cases, should it fall to our lot to hear a dying declaration, we cannot be too careful as to our conduct with respect to it. “Notes,” say my learned contemporaries, “if taken upon the spot, or immediately after a transaction,

* “Though a person testify what he hath heard upon oath, yet the person who spake it was not upon oath.”—*Gilbert*.

† Phillips, i. 228. See Appendix, *passim* for illustrations on this point.

may be used by the witness, to refresh his memory : the notes should be original, not copies*. If there be any point in them which the witness does not recollect, except that he finds it there, such point is not evidence ; for the notes are only to assist recollection, not to convey information†.”

The last thing I shall at present notice, is, that no witness can be compelled to give evidence, that will either criminate or defame himself. I should hope I am not addressing

* “ A copy of a copy is no evidence, for the rule demands the best evidence the nature of the thing admits ; and the farther off any thing lies from the first original truth, the weaker must be the evidence ; beside, there must be a chasm in the proof, for it cannot appear that the first was a true copy.”—*Law of Evidence, and Gilbert's Law of ditto.*

† Medical Jurisprudence, i. 164. This point is rather curiously illustrated in the Kinloch case, Appendix, Part II.

On the trial of H. Reason, and R. Tranter, for the murder of R. Lutterell, Feb. 3d, 1721, the dying declaration of the deceased having been given, by the minister of the parish, the judge observed, in summing up, “ Mr. Peters [the clergyman] is a very worthy person, there is no reason to doubt, but he swears upon his memory : and when a man swears upon his memory, he may mistake, and the mistake of a few words may alter the sense : therefore, it was very proper to have had the examination [taken by two justices, in presence of the clergyman,] here—that might possibly have corrected his memory.”—*State Trials.*

any who are likely to be placed in either predicament. In the former case, it may happen that a legal criminality shall be incurred, without any breach of morality ; but medical men are not more exposed to this than others. As to defaming ourselves, it cannot well be done, unless there has been real cause, from bad conduct ; and where this is the case, the party must take such care of his safety as he can.

CHAPTER II.

OF THE OBLIGATION INCUMBENT ON THE MEDICAL
PROFESSION TO GIVE EVIDENCE.

THIS might be described as being two-fold, legal and moral. The former we lie under, in common with the rest of our fellow-citizens; or, it may be said, with all mankind, who are within reach of the executive administration, when they happen to possess knowledge, which may be necessary to the purposes of judiciary inquiry. In England, witnesses are summoned by what is called a *subpœna*, that is, a summons issued by the proper authority, which must be attended to, *under pain* of consequences. In the barbarous jargon of the courts, the writ is called by the name of its alternative when not complied with, and is technically termed, a *subpœna ad testificandum*. If the summons be not obeyed, the defaulter is subjected to a penalty.

In cases of civil process, a witness is not

compelled to attend, unless his reasonable expenses be paid; but in cases instituted at the suit of the crown, expenses are not claimable, though allowed to witnesses who are indigent. Witnesses, during their attendance, are exempt from personal arrest at the suit of private individuals*.

I shall say no more about legal obligation; few will dare to evade attendance, after having been *subpœnaed*. But there is another sort of obligation, which long custom and general practice have erected into compulsion, as strict and imperative as a statutory law could possibly amount to. There is an implied compact between the public and the *medical practitioner*, by which the former claim, whenever they choose, indefeasible right and property in the time, attendance, skill, and knowledge of the latter.

“It is a complaint,” says Dr. Percival, “made by coroners, magistrates, and judges, that medical gentlemen are often reluctant in the performance of the offices required from them, as citizens qualified by professional knowledge to aid the execution of public justice. These offices, it must be confessed,

* See the case of Barbot, Appendix, Part II.

are generally painful, always inconvenient ; and occasion an interruption to business, of a nature not to be easily appreciated or compensated. But as they admit of no substitution, they are to be regarded as appropriate debts to the community, which neither equity nor patriotism will allow to be cancelled*.”

I confess that I have, on a former occasion, quoted this passage rather inconsiderately†; and having said so, I feel myself at greater liberty to animadvert upon a published opinion of so much importance, emanating from so respectable an authority as the late Dr. Percival, for whom, in every other point that I can recollect in his character and writings, I entertain the utmost deference. The complaint is represented as being made by *coroners, magistrates, and judges*. Of *magistrates*, I shall say nothing; they compose an order in the state, that may, indeed, be called the country’s boast; their services are of the most important nature, and are not only discharged under much personal inconvenience, but in a manner hardly conceivable to those who view

* Medical Ethics, chap. iv.

† Principles of Forensic Medicine, first edition.

the thing in the abstract. If they do find *us* backward in aiding them, I concede to *them* the right of complaint. With regard to *judges*, it must have been the case, that our author knew of their complaining, otherwise, a man of such integrity would not have recorded so serious a charge against his brethren; but I should hope that few have heard similar complaints from that quarter. However, taking the matter as it is alleged, and in its most flagrant form, admitting that judges have spoken, (even on the bench,) uncourteously of us, I bow to the judges. The *coroners*, however, astonish me, and I must say that I cannot be so submissive to them. Do they find their brethren, the attorneys*, more ready to perform offices for which, "as citizens qualified by professional knowledge to aid the execution of public justice," it is well known that it is of little use to call upon them *sans solde*†? But it will be said that this retort is futile,

* Most of the coroners are appointed from among this class of lawyers.

† This is by no means to be considered as a sneer against a highly estimable order; but lawyers are well known to be tenacious of remuneration. There want not, among ourselves, parallel instances; yet law is perhaps a luxury, while physic is a dire necessity to poor mankind.

because *we* are bound, in a way that others are not, to do all the labour that can possibly be required of us—even to build churches and bridges, cut canals, and make roads; supply the country with jails, attend them as turnkeys, and finally, “to aid *the execution* of public justice, by performing, without reluctance, the office that may be required from us” by a public functionary who shall be nameless, as soon as, in the rapid course of modern improvement, we shall become “qualified by professional knowledge,” so to do.

But I cannot, in sober thinking, persuade myself, with all my respect for Dr. Percival, that we are so deeply *in debt*. True it may be, that by law we are exempted from certain little, though troublesome exactions, as to personal service, which fall upon some of our neighbours. We are excused from sitting on juries, being parish constables and overseers; but I think I recollect instances of medical men being drawn for the militia, and I would rather get out of

I believe the gentlemen of the other profession are not backward to assist the needy, who want not only redress but money. The claimants, however, are comparatively few.

the way of a press-gang*. Dr. Percival may call our services “an appropriate debt;” but debt implies something previously received; and he has himself looked upon the exemption (as far as it goes) as being allowed, “in consideration of the diligent and assiduous discharge of professional duty, which the legislature has generally presumed to occupy the time and employ the talents of physicians and surgeons, in some of the most important interests of their fellow-citizens†;” which presumption, I take leave to say, was entertained, and not only entertained, but acted on, long before it became the practice to call upon us for such *taxes*, (I will not acknowledge the *debt*,) to so large an amount as is now required‡. So that in truth these exemptions are but the

* Let not the coarseness of this allusion defeat its claim to notice. All medical men do not powder very white, or go about their duty in silk stockings, and corresponding articles of outward adorning. Nor are the agents of the Lord High Admiral, upon such occasions, very apt to make nice distinctions. I knew a gentleman *in holy orders*, whose person, manners, and habits, were far within the pale of delicacy which perhaps becomes the priesthood, who was taken from a vessel in which he was a passenger, and kept some time on board a king’s ship.

† Ubi supra.

‡ The relief in question is, to a certain extent, very

acknowledgment of a debt contracted by the community towards us ! I am confident that there are practitioners who would prefer their share of liability, in regard to serving the offices in question, to the incessant demands under which they suffer ; being, in some situations, absolutely oppressed by the frequency of those calls, more especially on the part of the coroner. The blame lies not, it is true, with him ; but a considerate person in that situation would make no complaints : for he has the power of compelling us to attend, and where that is the case, to complain of our absence is reflecting on himself.

For my own part, I have no delicacy as to the expression of my persuasion, that the power which assigns us over to the public

ancient. By an act of Henry VIII. (quoted by Paris and Fonblanque), the surgeons had their privilege of exemption from bearing arms, (which “ they and their predecessors, from the time that no mind is to the contrary, for the continual service and attendance that they daily and nightly, at all hours and times, give to the king’s liege people, for the relief of the same, according to their science,) extended to discharge from constable, watch, and all manner of office bearing any armour ; and also of all inquests and juries,” &c.—*expressly because, in consequence of their serving some of these offices, many had perished for want of professional aid.*

prosecutor, whenever he may please to want us, from a notion that he has a right to the *unrequited* exercise of our best energies—and that under circumstances the most repugnant to our feelings as men, the most perplexing to our resources, the most hazardous to our reputation, and often the most dangerous (in various ways) to our personal safety* — that the power is oppressive; and I would even go so far as to impeach the equity of the practice.

Ever and anon are we exposed to such requisitions. “Men in general,” say the authors of *Medical Jurisprudence*, “can only be summoned as witnesses when they have, or are reasonably supposed to have, cognizance of the particular facts in question; and *he* may therefore deem himself peculiarly unfortunate or imprudent, who is often present at such scenes as give rise to criminal investigation; but the medical practitioner, in addition to his liability of being

* From the minute inspection sometimes required, in cases of questionable propriety on account of the state of dead bodies. True, of late, and but very lately, we have been informed of means to obviate this; but such means are *practically* little known in England. They belong to judiciary medicine, of which the colleges make no account.

called on for his assistance, and so becoming acquainted with facts, may also be summoned on matters of opinion*.” So that in truth it is no insignificant part of our duty *to be witnesses*; for we are constantly liable to be made so, in a way that no other class of the community is exposed to, if we except police-officers. After all, therefore, it may be better to preserve the exemptions with which we are endowed; for if they were to be removed, and we should become liable to perform the duties in question, it would not be the substitution of one set of burdens for another, but the addition of these to what already exist.

More explicitly — I would venture to assert that this opinion, with regard to the claims of the public on the labours, anxieties, and even property of the medical class of citizens—an opinion so very prevalent, and so specious, as to have been stoutly maintained, even by those on whom its pressure is most burdensome,—is founded in fallacy; that it is a mistake on every principle of equity, and an imposition in point of fact. The medical practitioner, if weighed in the same scales as other men, owes not a particle

* Medical Jurisprudence, I. 158.

of service to the state, or to the public, on the score of concessions yielded to him in return, or implied by any courtesies, with which his individual citizenship may have hitherto been taken for granted to be endowed. The exceptions in question, (now amounting to little, whatever may have been their primary importance,) were granted not to us, or clearly at least not for our benefit, but by the public to themselves; which public has been in the habit of reaping the advantage, while we have paid the cost. Our ancient legislators have merely done a plain and very simple duty, in not preventing us, by some preposterous law, from being at all times ready to attend the calls of sickness and of contingencies, to which our fellow-citizens are at all times exposed. The case is the same among savages, at least among such as have any notion of healing bodily ailments, and even among some who are reputed greater aliens to the sympathies of human nature than savages; for a respect to medical men has generally been manifested on the part of pirates and banditti. In short, these wonderful concessions, upon which one would think that the great palladium of Englishmen was founded, are very much allied to the practice of

providing a porter to a public hospital, for the simple purpose of opening the door upon all emergencies ; and contrary conduct would have been very like endowing such an institution, and then building up the door-way, so that its benefits would be accessible to those only who might be able to climb in at the window.

The real ground of complaint against medical practitioners appears to me not so well founded in regard to reluctance in aiding the inquiries of public justice, as in their doing so by inept proxy, while at the same time they acknowledge the obligation.

The task of instructing the tribunals, is often delegated to those who are the least qualified ; and it is absolutely disgusting to observe the displays that are frequently and unavoidably made on the part of incompetent substitutes. Lads, whose knowledge of the medical sciences can be little more than a name, and the whole of whose practice in the medical art can have extended no farther than spreading a plaster, mixing a draught, compounding a pill, administering an enema, or at the utmost extracting a tooth and performing the operation of phlebotomy, are appointed to enlighten the judges of the land, who are, in all probability, deeper

read in the medical sciences, than the sage instructors of these witnesses themselves. This reprehensible abuse naturally arises out of the custom by which the boy becomes witness to a matter of fact, and is instructed no better than to attempt answering questions on matters of opinion ; but to this point I shall have occasion to address myself very particularly in the sequel.

CHAPTER III.

*OF THE PERPLEXITIES OF MEDICAL WITNESSES WHEN
GIVING EVIDENCE.*

THERE is hardly a situation in which a medical man can be placed that so powerfully menaces his reputation, and no one where so much personal uneasiness is endured. The learned authors of the work last quoted, (one of whom is a barrister,) observe, that the medical witness is too frequently rendered miserable and inefficient for the purposes of justice, from the novelty, and perplexities of a situation so different from that in which he is generally placed in the ordinary exercise of his profession. The remark is also made, and truly it is too well-founded, that there is often but little apparent difference between the situation of the witness and that of the criminal*. The liberty which the advocate claims, and is allowed to the

* Medical Jurisprudence, ubi suprà.

utmost, is often, very often, applied to the unworthy and unmanly purpose of unhinging the witness, rather than eliciting the truth. But I acknowledge that it is not very easy to rectify this on the part of the only person who possesses the power. The judge is necessarily reluctant to interpose voluntarily ; and witnesses are unaware, or at the moment forget, that they have a right to protection from insult, if they are honestly bent on the discharge of their duty, and accordingly but seldom appeal to the proper quarter.

I am quite aware, too, that every advocate must act according to the view he has of the proper means of maintaining the interest of his client ; and this impulse will manifest itself variously, according to the taste, talents, disposition, and habits of the advocate ; which again will be influenced by the same circumstances on the part of the witness. Those who are conversant with the practice of *criminal* courts, know well the nature of such witnesses as are in the habit of presenting themselves at the Old Bailey, for instance—I am speaking of *lay witnesses*, not of professional. Interested and unprincipled, nay even mercenary agents, are continually coming forward to swear and say any thing, without the

slightest check, beyond the fear of the law, should they commit the legal crime of perjury. It is hard upon men of probity, it is unjust towards medical men, that no distinction should be observed in the treatment they receive and that which is due to rogues. But perhaps it is difficult for advocates, who have so much occasion to sift and expose characters of a depraved cast, to be continually alive to the difference — necessarily habituated, as they must become, to mistrust, and estimate very low the claims of those they meet often at the criminal bar, to any share of courtesy.

Medical witnesses, after being prepared to discharge their duty to the best of their ability, may find that the examination turns out to be a very different thing from what they anticipated: it may even be wide of the real point, and is sometimes purposely so. This may occur through want of acquaintance with the subject on the part of the examiner; in consequence of which the witness is exposed to the mortification of being misunderstood, and having his statements misapplied — of being asked questions that no person can answer — of being made, perhaps, a party to the triumph of falsehood

and error — or of being rendered amenable to unmerited censure, for testimony that he never intended to give.

Upon such occasions a timid or a stupid man may be ruined with his eyes open, because he is not so adroit at opening his mouth. One is, under such circumstances, thrown entirely on his intrinsic resources: he cannot run home to his books, or into a brother practitioner's house to state a difficulty, and have the benefit of information or advice how to get out of it. There he is, and there he must remain, and abide the upshot; and, (if he acquits himself badly,) endure the scrutiny and displeasure of the bench, the brow-beating of the bar, the scorn, laughter, or contempt of the audience, the discontent of his friends, and the exposure of the public press, with all the consequences that may follow to his reputation and fortune. It is on occasions of this nature that we ought "to have our wits about us," for no other help can be resorted to; and it is on such occasions that real superiority is likely to be fairly displayed. Nor will a general and accurate acquaintance with one's profession always do; but being too frequently relied on, it occasionally proves the *ignis fatuus* that leads

our brethren into a slough, whence they get out sometimes in but indifferent plight.

A dexterous advocate has a great advantage over any witness, however doughty ; and may contrive to lead a very intelligent one so far astray, as that the latter may be deceived into a train of admissions, the inferences from which are to be afterwards turned against him. This is a trick which the witness may not perceive in time to save himself, or if he should, he may neither be bold enough nor clear-headed enough to do so ; and even a moral conviction of the unfairness of such procedure may not always be sufficient to warrant those, who are to appreciate and apply the evidence to the purpose at issue, to draw a distinction between the presumptive meaning of the witness and the ostensible purport of what he has said. As we can have little evidence as to thoughts, opinions, or intelligence, but through words, which are their proper signs and medium of exhibition, a witness can in no other way give testimony. Caution in speaking, as well as in preparing to speak, should be observed by him ; and he should on no account answer a question till he clearly understands it, or pretend to frame an answer when he

knows nothing of the matter. He should avoid conjectural observations, and continually bear in mind that what he says must stand upon record as signifying what he means. It will not do, under such circumstances, to receive one statement first, and afterwards substitute another*. Such a practice would strike at the foundation of evidence. If it were allowable to honest men, it would be claimed by rogues; and justice could never be duly administered.

Some men, and such have been found among members of our own profession, are so devoid of taste, that they run themselves into difficulties and perplexities which do not naturally await them. It is hardly to be expected, that this source of embarrassment should be viewed with sympathy or regret—much less that any care should here be taken to remove it, or to devise a remedy. The thing

* In a recent cause tried in the Court of King's Bench, viz. *Parkins versus Cobbett*, one of the witnesses manifested a disposition to amend something he had said. The Chief Justice would not allow him to do so, after finding where what he had already stated pinched.

It has been well observed, that the man "is to be *pitied* or *suspected*, who finds himself obliged to enter upon an explanation of the evidence which he has given in a court of judicature."—*Dr. Watkins, with regard to the Medical Evidence on the Trial of Fenning*. See Appendix, Part II.

itself is of too Proteus-like a character to be tangible ; and as it belongs to the dross of the medical, in common with that of every other character, I really do not see that it has any claim to be investigated. I am sorry, however, that a recent occurrence has made it imperative on me to notice a perplexity, that, but for a calamity in which I have been a small sharer*, would not have found a place in the present chapter.

It has been thought incumbent on them, by writers on forensic medicine, (at least I have considered it so upon myself,) to animadvert rather pointedly on a practice that had crept in among medical witnesses, with regard to the performance of a troublesome but most important and intensely interesting part of their duty†, — I allude to the examination into the vitality of new-born infants. They have been rather fain to throw discredit upon the most important and indispensable article of proof, by pronouncing the hydrostatic pulmonary test to be *absurd* ;

* The original manuscript of *the text* of this volume perished in the fire at Greville Street ; and as I had no transcript, the circumstance gave me *an opportunity* of writing it over again, and of introducing, in its proper place, this novel sort of perplexity.

† Principles &c. pp. 344, 345, 2d edition,

and have readily imitated one another, (for the truth is, they have seldom, if ever, spoken from any knowledge of their own,) in saying that it is *exploded**. I believe it is pretty well known to what quarter the credit of this is due†. Later authorities, with whom Dr. W. Hunter would himself coincide, were he one of our living physiologists, have entertained more just, but different views; and I had flattered myself from the degree in which the combined exertions of all medical jurists, both at home and abroad, had succeeded in correcting an error, unworthy of the enlightened period in which we live, there was every reason to hope that, in future displays of professional evidence on this point, we should have nothing but commendation to bestow. I had begun to remark with satisfaction, how much more carefully and consistently medical gentlemen were of late in the habit of addressing themselves to this duty, and to how much

* Ut *suprà*, and Appendix to the present volume, Part II., under the head *INFANTICIDE*.

† Dr. William Hunter, in a paper read by him before the Medical Society (so long ago as 1783), unhinged the ideas of the profession upon the physiology, while he contributed to place the morality of *Infanticide* in a just and humane light. See Appendix, Part I.

greater advantage they appeared in the capacity of scientific witnesses.

But in all this, it would appear there has been no real cause for rejoicing: the errors of William Hunter are enforced from the judgment-seat, while those among us who choose to follow the guidance of scientific truth, in preference to the dogmas of a great name, are pronounced to be deficient in respectability, and are not allowed to give evidence that may tend to correct the mistakes or supply the deficiencies of one who, unhappily for us and for our science, did not live to see the introduction of forensic medicine as an important and well-digested branch of political and philosophic study*. When a practitioner is thus treated, either by direct censure from the bench†, or by oblique reflections from the bar‡, we may feel for his perplexity, but we could not help ourselves in similar circumstances.

This is a very slender sketch of the subject of perplexities; but I expect it will be considerably filled up, ere I go through the re-

* See Appendix, Part I.

† See the report of a late trial at Dorchester. London Medical Repository, October 1824.

‡ See the extract from the Examiner respecting a cause tried at Taunton, 1819. Appendix, Part II.

maining chapters ; in the course of which I purpose to discuss more directly certain points upon which may be founded, if not rules, some useful cautions for the guidance of the medical witness. Should there be a disposition to dissent from any, or even from all of these, it will give me no chagrin. I shall do my best in offering my assistance ; but every one is welcome to obtain better where he can. If the attention of men of judgment be excited to frame rules and maxims for themselves, I shall gladly avail myself of the advantage. The great mistake seems to have been a total neglect and want of every thing of the kind.

CHAPTER IV.

OF THE DIFFERENCE OF COURTS.

AN attempt has been made to arrange the topics of Forensic Medicine, under the heads of *Criminal, Civil, and Ecclesiastical* questions, with reference to the tribunals so denominated, before which the respective inquiries appropriate to either of them may be entertained. Such a classification is of the most artificial and inconvenient nature ; and I think that a more appropriate modification of the same principle, would be to separate them according to the relations they may bear to the province of the *physician, surgeon, apothecary, or man-midwife*. Were it so, I doubt not that more pointed and satisfactory evidence would be obtained, than is often the case when the surgeon is examined as to matters in which he would apply to the physician, in the ordinary course of his duties ; and the apothecary, who, though reputed near the

bottom of the scale, is most preposterously considered, and thereby encouraged to consider himself paramount to all the other orders in the profession*.

The medical practitioner, under whatever denomination he may carry on business, is liable to examination before a variety of tribunals; but the distinction I mean to consider, is not that alluded to above. These courts are much alike in dignity and authority, and the immediate results of their cognizance are of such importance, as to compel a man to think (as far as he may be furnished with the means of obeying such compulsion), before he ventures to speak. The obligations laid upon the witness are the same in all, and the services incumbent upon him differ but little. True it is, that there may be a very great difference in certain circumstances of consequence in the eye of many witnesses. For instance, some of these courts have the power of life and death; others of settling property; and, while the whole participate in the maintenance

* It is seldom indeed that we meet with a disposition to distinguish in this respect, on the part of lawyers. One instance will be found in the sequel. See the examination of the first medical witness in Butterfield's case. Appendix, Part II.

or destruction of reputation, there are some under whose jurisdiction personal character more peculiarly falls. But to the witness, it may often be of more consequence to consider the *publicity* of the matter; and certainly this is not great in the courts belonging to the church.

The most important issue that *can* depend on medical testimony, is the life of a fellow-creature, accused of a capital crime, which cannot be brought home to him without the aid of professional knowledge. On such an occasion, it is not conceivable that a witness should lose sight of his responsibility; and indeed the fact may be, that he is often too much alive to that consideration. Medical men are sometimes afraid, lest they should hang a prisoner by what they say. I have heard those who ought to have had at least this very ordinary knowledge of the spirit of the laws of their country, that a prisoner cannot be convicted, but on positive and conclusive testimony—I have heard some who ought to know better, say they would not speak doubtfully, lest they should condemn the innocent. Nothing is more notorious than that, in this happy land, a doubt is always construed in favour of the accused. A different impression

must have been imbibed from novels and romances, or from the history of hideous perversions of justice, in countries less favoured, or in times less enlightened*.

Upon these occasions, every thing contributes to impress the unconcerned spectator, and still more powerfully the responsible witness, to whom the issue may be nearly as serious as to the accused. There is a grandeur attendant on a general gaol delivery, which is uncommonly imposing; the judge presents an impressive aspect, heightened by the profound deference observed towards him by all the officials; while at the same time his actual authority is very great. The decorums observed in point of costume, deportment, and formalities, must have their effect; the serious attention paid to the business in hand; the arraignment; the installation of the jury; the opening of the case; the examination and cross-examination of witnesses, &c. together with the aspect of the accused, will often make those uneasy, who have no part to perform themselves. How much greater cause for anxiety has he, who may be in momentary expectation of

* The reader will consult with advantage a remark or two by Dr. Percival, on this point.—*Med. Ethics*, chap. iv. section xix.

taking the place of one whom he may have seen under the torture of a cross-examination, as to a mere matter of fact, in order to undergo the same ordeal, as to matter of opinion, on a subject of which he may have little or no knowledge; or to whom, be he ever so learned, or competent to impart his knowledge elsewhere, the very circumstance of a public appearance must be itself a moral torture. But make this appearance he must; and risk the frown of the judge, the perplexing questions and harsh constructions of the advocate; the pertinent, but, probably, not less puzzling interrogatories of jurymen; the curiosity of the crowd, and the agonising scrutiny of the culprit—enough to overwhelm a man of weak nerves and slender qualifications, like a torrent.

The medical witness is, however, often required, in courts of comparative dignity at the lighter proceedings of *civil process*, where it may sometimes be allowable, and is not unfrequently irresistible, to mingle levity with the graver aspect of the affair. But let him be on his guard, lest this seduce him into forgetfulness, or indifference about his proper business. A man may speak the truth in mirth, as well as in dulness; but it may be necessary, sometimes, to consider

whether the same respect is likely to be paid to it. I leave this, however, to be managed according to the occasion, and to the witness's own perception of fitness and propriety.

But the medical practitioner is still more commonly in request on occasions of minor lustre, though, perhaps, not really of less moment. The remark, of course, relates to *coroners' inquests*, attendance upon which is a very serious matter, both as to frequency of occurrence, and the consequences of our evidence. It is quite unnecessary to describe the economy, or relate the object of such an occasion; the inquest held by this officer is a court, and one of considerable importance. In all cases of sudden or suspicious death, twelve men are summoned* to inquire into the circumstances of the case, to declare

* The coroner is generally satisfied with the *attendance* of twelve, who must agree in their verdict. More are summoned, and the jury may, if I mistake not, consist of more,—but twelve must be of one opinion.

An inquest was held in St. Thomas's Hospital, in Jan. 1817, on the body of a boy aged thirteen, who shot himself. The Jury being composed of sixteen, twelve were of opinion that it was a case of *felo-de-se*, and four that it was *insanity*. The coroner stated, that whenever a jury is composed of more than twelve, if that number be of one opinion, it is sufficient, and a verdict was accordingly given—*Felo-de-se*.

whether there be grounds for laying a criminal charge against any person or persons, and also, if possible, to ascertain who they may be. Accordingly, it becomes necessary to obtain all the evidence bearing on the merits of the case; and the coroner is bound to receive testimony, *upon oath*, both of a tendency to criminate, and, if a charge be laid against any individual, to exculpate. In many such cases the truth cannot be obtained, without the aid of medical witnesses, who are sworn accordingly, and whose depositions, being reduced to writing, are read over to, and signed by themselves. Should the jury, at the close of the proceedings, return such a verdict as removes all suspicion, and implicates no person in an unlawful act, the case ends there; but if, on the contrary, their verdict renders further proceedings necessary, the issue is reserved for a higher tribunal, and the person accused is committed to prison, to abide delivery in due course of law.

Nothing can be more important than the duty which a medical man may have to perform upon such occasions. His dictum may be the influencing consideration that directs the issue. Should he, therefore, be the means of discharging a murderer from amenability

to the law of the land, as prescribed by God himself, what will be thought of him? or what can he think of himself, should it be discovered that he acted from ignorance, or some other impulse under which it was, on his part, wrong to be? On the other hand, (and this, perhaps, is the common abuse arising from imperfect preparation for the discharge of such a duty,) if he be the means of shutting up in prison, among felonious characters, and the depraved of every description, an innocent and respectable person, under an accusation of the foulest of crimes; of taking that person, it may be, from his family, and in doing so, taking from that family their bread, and from both their reputation, or very likely their desire and future means of getting through the world by honest industry; (for confinement in jail, and a trial for life, do not add to a person's claims to estimation;) he can rarely leave the unfortunate being on quite so good a footing, in this respect, as he found him. I ask, if a medical witness be the cause of all this, when the upshot may prove that he ought not to have done so, how can his pillow contribute to the repose of a head so badly or so dangerously furnished with ideas of duty, and knowledge as to its performance?

But this is not all—though it may be considered that I have drawn a picture of imaginary horrors. When the trial takes place, our witness will be wanted again ; and when he makes this second appearance, under the solemn circumstances already described, it will not be to receive the thanks of the Court for the trouble he has already taken in “ aiding the execution of public justice,” or merely to prove his own signature to the Coroner’s examination : no—no. He is handled *de novo* —circumstances are more minutely and more pertinaciously inquired into ; his qualifications may be scrutinized ; and —the *cross-examination*—think of that !—Should better information have fallen to his share during the time that the prisoner has been “ rotting in jail,” I will not conceive that he may be reluctant to acknowledge it ; but on the contrary will suppose that it is all displayed. If so, then comes the excruciating inquiry, why did you not say so before the coroner ? A. I did not then know that it was so. Why did you not know ? Were you not then supposed to be as competent a member of your profession as you are now ? It was your business to know. Where were you educated ? What was the course of your studies ? Who were your teachers ? How long did you attend on

their instructions? and — What testimonials have you received as to your fitness to exercise the functions, of whatever character it may be, by which you are designated and reputed? These, and other awkward interrogatories, await the foolish man who runs into the clutch of a prisoner's counsel by conduct such as that against which I have uttered a warning.

If in giving evidence that is weak, or still more, that is shewn to be erroneous, we endure the silent mortification that our own reflections must entail upon us, what must be the feelings of a medical witness, who sees such a passage addressed to him in print as the following: "This, Sir, is the woman whom you have involved in an expensive prosecution, whose expectations you have blasted, whose life you have brought into the most imminent danger, whose name you have attempted to stigmatise with indelible disgrace*."

When we proceed to attend upon a Coroner's jury, we are not perhaps very likely to be reminded of the importance of the occasion by the aspect of the court. Throughout the kingdom (for the usage at large is the

* Letter to Mr. Sanxay, published after the trial of Butterfield. See Appendix, Part II.

proper example to be cited, and not the custom of a particular place, least of all of the metropolis,) a medical practitioner, living in the neighbourhood where the transaction is going on, will in all probability find that the court, or tribunal, or persons to whom he is immediately answerable, are composed of those familiarly known to him; and very likely they may rank a step or two lower in the scale of society than he is habituated to associate with. The place of assembly is probably a mean apartment in a village ale-house, redolent of nicotian; and the beau-ideal of a "Crowner's quest," is very much the same as that of a *country-club*; saving that in the latter, the business is possibly discussed with more patience, and *the truth* is more frequently elicited; *in vino veritas—nonne in cervisiâ?* Too often are important grounds for inquiry slurred over: and evidence is frequently taken in such a way as manifestly shews that it is not wanted, any further than may be necessary to make a sufficient shew on the face of the proceedings. This being accomplished, if no troublesome person be present to disturb the even tenour of the way, and no unlucky jurymen of sufficient intelligence to confuse the affair by putting an awkward

question, the coroner tells the jury what they ought to do; the jury do as they are bid, and every body gets away in good time for dinner, or for supper, as the case may be.

Not long ago, an inquest was held at a short distance from London, the circumstances leading to which fell under my immediate observation, and were such as to induce me to attend as a spectator. The object was to inquire as to the manner in which a young unknown female came by her death. The body had been found floating in the Thames, and had been several days, apparently, in the water. The occasion was a perfect realization of what I have stated. There were from twelve to twenty honest tradesmen sitting round the public-house parlour; and the parish-beadle in attendance as officer of the court, with two or three witnesses—all grumbling, because Mr. Coroner was a little behind his time. It was the duty of the parish-surgeon to have attended, and he had been duly summoned for the purpose; but, he neither came, nor sent any one in his place, (probably in this he acted conscientiously,) nor forwarded any excuse; nor did the court seem to care in the least about the matter—probably they thought it as well that he neither gave them nor himself any trouble. Another

practitioner, however, secured his admission, by a voluntary offer to be of whatever service was in his power. After going through the formalities, from “ O yes,” down to “ all persons not of the jury must withdraw,” they returned a verdict of “ Found drowned.” There was no doubt as to the case being one of accidental drowning, even in my own mind ; but, as I thought the body should have been opened, and had some knowledge of the foreman, who on his part was aware that such things had formed a prominent object of my studies, I signified to him that their verdict was unwarranted, for that although they had proof enough as to the *finding*, there had not been a rag of evidence to shew that the deceased had been *drowned*. The honest and well-intentioned official went back instantly to his brethren with a view of getting them to re-consider their verdict ; but that was a task not to be accomplished by a mere mortal juryman ; it was too late—too late in the proceedings, and what was more, too late in the day. It was “ *nunc est prandendum*,” — there it ended, and the shadows closed upon a niggard sod that covered — nobody-knew-whom, and few cared what ; a suicide, or a victim of complicated violence : the coroner filled up his paper, and the jury went to bed

as they had done the night before, *requiescere in pace*; which was more than was supposed to have fallen to the lot of the poor stranger*.

With similar occasions practitioners throughout the kingdom are doubtless familiar enough; and, although in the metropolis matters are not upon quite so easy a footing, a practitioner has but rarely, even there, a chance of being reminded of the real importance of the occasion, and of the magnitude of his responsibility: even there medical men have uttered the most unwarrantable statements, and have done no small mischief. We must not have one set of opinions, or one sort of testimony, for the Coroner with his yeoman jury, and another for my Lord Chief Justice and his pompous assize. Nor must we permit any apprehensions as to consequences to influence our evidence; still less to act in any way upon the truth.

But I feel that I have said enough on this part of the subject, and shall finish the present chapter by one additional consideration; with a view to impress the mind of the

* She was interred in consecrated earth, i. e. in the usual burying-ground, but (as report went) without the rites of the church; and a clamour was afterwards raised that the grave had been robbed. I have alluded to the case in the "Principles of Forensic Medicine," page 8.

practitioner a little more strongly, as to the necessity of giving the best evidence he can before a court of inquiry, such as that just described. He takes the same oath as before the highest tribunal; but the dread of legal perjury cannot enter into such a mind as that which should belong to a member of a liberal profession. I have been copious enough on the subject of sending a person unwittingly and unwarrantably to jail; and shall suppose it impossible for any one to be the means of doing so *wantonly*, (for that is the fact when it is done *ignorantly*,) who can look beyond the passing moment; but I mean now to suggest to the practitioner who may give blundering evidence before the coroner, the figure he is to cut, when that evidence is overturned in the face of his neighbours, of his countrymen, and of the world, by different and more correct statements on the part of others of the profession, brought into court for the purpose of refuting him; with the too probable effect also of injuring, if not of utterly ruining him.

For a trial of life and death he may have months to refresh his memory, or inform himself; to a coroner's inquest he may be summoned when walking the street, as happened to myself very lately, just at

the hour of sitting. What preparation can *then* be made, needs no inquiry. The lesson to profit by is obvious ; but I shall have to inculcate it under another head.

CHAPTER V.

OF PARTY BIAS.

LIKE other men, we have our preferences and our prejudices; we form our particular attachments, and, along with them, indulge hopes and wishes in regard to the welfare of those who are their objects. Nor is it any thing but evidence that we participate in the ordinary feelings of human nature, if we are not cordially disposed towards every one of whom it may chance that we have knowledge. This influence is common to all men; and though its intensity diminishes as it extends beyond one's family—through the circle of relatives, personal friends, and associates of various gradations in the scale of intimacy—to those who are known to us only as denizens of the same spot, or partisans in the same line of general or local interests which may, and, throughout the community, more or less, do attract the attention, and occupy the mind

of almost every member of society ; it might be difficult, upon close scrutiny, to shew that a witness *can* be altogether free from a pre-conceived leaning towards some particular issue.

But when Justice, who can see no distinctions, and must consider all amenable alike, finds it necessary to examine into the merits of an implication, against whatever individual, or of whatever nature, she expects that her agents shall, after her own example, shut their eyes to partialities. One of the clearest lights of this or of any country, has called evidence “the lantern of justice* ;” and it may, in a humbler way, be compared to the well-known guide of an intelligent blind man, who, though conducted among ordinary difficulties and over insignificant obstacles with great sagacity on the part of this actuary, will promptly be conscious of aberrations, and ready to interfere when palpably misled, or brought to a pause.

The simile will admit of this farther extension—that when local intricacies, (which may be compared to questions of science,

* Lord Bacon, in his speech at the arraignment of the Earl of Somerset, for the murder of Sir T. Overbury, 1616. *State Trials*.

foreign to the proper business of the juriconsult,) baffle his own skill, the blind will call upon the bystanders for aid ; and shame ought to be theirs who would mislead him. But I can carry the figure no farther ; for although Justice, and the poor man who depends on the services of his dog, be both occult, the former carries in her right hand a powerful weapon, and knows no distinction as to those upon whom its weight may descend.

To approach, then, our subject more closely — witnesses are seldom called upon, except by one of the parties concerned in the issue, and of course are required to attend, in the belief that their evidence will favour the side by which they are produced. Such may be said to happen universally in matters of fact ; but even in matters of opinion, where there is necessity for professional testimony, the way in which it is commonly obtained, is upon the requisition of one of the litigating parties.

I must here advert to the distinction between the crown and civil sides of the same court. At this very moment, it is impossible to look into one of the daily papers, (of which, in the present want of agitation in the world, the columns are filled with the

litigations of Thomas Stiles and John Nokes,) without seeing that *this* judge sat on the crown side, and *that* judge on the civil. The difference, or rather want of difference, to the witnesses, has been sufficiently described in the preceding chapter: all that belongs to the business of the present, is to mark the connexion that may subsist between the distinction and its designation.

In the crown division, are tried those issues that pend between the public peace, or that of our Lord the King, (the nominal prosecutor,) and the culprit: on the civil side, are entertained disputes between individuals, relating either to property or personal grievances. On occasions of the first class, we shall be brought forward, either at the instance of the public prosecutor, in which case we are styled *witnesses for the crown*, or on that of the accused, when we shall be denominated *witnesses for the defence*: and the danger of leaning to either side is greater perhaps in the latter case than in the former.

It is when we see an unfortunate man before us, anxiously watching the words that may fall from our lips, in form of a statement which is to consign him to a gibbet, or a gaol, or to exile; or shall restore him to

his family, and to society, that compassion may interfere to disturb the equilibrium of that sense of justice which should be maintained even in our breast. The view of consequences is not our concern, and it is no more our duty to be compassionate than to be vindictive*. By this, I do not mean to say that we must not entertain the common feelings of humanity; I merely warn the jurist, that he must not act according to them. It is a distinguishing feature of British law, that no man, be he accused of ever so heinous a crime,—even if committed under the most aggravating circumstances, and of which the notoriety may be such as not to require a shadow of proof for the satisfaction of individual minds,—is guilty, until proved so by the very clearest evidence. Were he even to be tried by a jury who saw the deed committed, unless that jury could give evidence to themselves, their knowledge of his guilt ought not to bring it home to him†. In some other countries, the

* See Percival, ch. iv. sect. xix.

† Vide *suprà*, page 12. I thought this was a conception of my own when it went to press; but I have since met with a passage, founded on something nearly, if not specifically the same, the use made of which, however, does not seem to destroy the applicability mentioned above.

accused is brought before the tribunal, rather in the state of a person convicted, than one merely charged with, or suspected of a crime. He is presumed to be guilty, and advantage is taken to prevent him from establishing his innocence*. Here, on the contrary, a world of pains is often bestowed to convict a man, who is perhaps eager to acknowledge his guilt; and never does it happen that a prisoner pleads guilty, without earnest admonition from the judge to retract his confession, and abstain from being accessory to his own condemnation: nor do I believe it would be easy to adduce a modern instance of a prisoner having been convicted after retracting a plea of 'guilty,' upon any other grounds than such as would have brought his guilt home to him, in the face of determined resistance.

"They (the jury) may have evidence from their own personal knowledge, by which they may be assured, and sometimes are, that what is deposed in court is absolutely false; but to this the judge is a stranger, and he knoweth no more of the fact than he hath learned in court, and perhaps by false depositions, and consequently knows nothing."—*Law of Evidence*. Anon.

* The case of Castaing will illustrate this. See Appendix, Part II.

But this account of the compassionate spirit of our jurisprudence does not include that BIAS, or *partiality*, of which I would particularly speak. I allude to a predisposition in favour of a party, towards whom we entertain a feeling of personal regard, or whose interests are such as we must, from private motives, be under strong temptation, if not a degree of necessity, to serve. Without proceeding farther in the general denunciation of this impulse, when the interests of justice are at stake, and the truth of a matter is required not only to be stated, but to be fully stated, I shall confine myself to a simple warning, on the score of danger to the witness.

When there is such a disposition on his side, I would give him notice that he will perhaps be placed in jeopardy, from the examination he undergoes first, by the advocate employed on behalf of the party for whom he feels interested. And here, perhaps, it may be proper to remind medical men that every witness is liable to two examinations; first, on behalf of the party by whom he is produced, which is the direct, or chief examination; and then by the adversary's counsel, who, by what is termed a

cross, or indirect examination*, endeavours to shake the witness's credibility. His object is to elicit something inconsistent with what may have been said at first,—in short, to promote his client's cause by obtaining evidence in its favour, even from the hostile quarter. Testimony given in this way is generally considered strong; the more so if obtained with difficulty, and accorded with reluctance.

I believe it is a general rule of evidence, that no person interested in the question can be a witness. Now, although the word 'interested' may be supposed, in this sense, to have even a *technical* meaning, yet that meaning is sufficiently allied to its ordinary acceptation, to warrant me in suggesting to that witness who, with a strong party bias, goes through an examination, whether he can have the full answer of his own conscience as to the fairness, not to say legality, of placing himself in such a situation.

I have heard some of my most respected friends, who had placed themselves before the judge, and submitted to examination under

* Upon the meaning of this term, a very useful hint will be received from an American lawyer, in the case of *Whistelo*. Appendix, Part II.

a preconceived opinion as to the case, express dissatisfaction with the result, when they ought more properly to have been dissatisfied with themselves, for having prejudged its merits, and gone to aid a party, rather than to act as *a witness*. I have heard such express regret that a previous conference had not taken place, and an understanding been established between them and the counsel for their party, whereby, of course, the counsel was to have been instructed what questions the witness could answer best. As friends have told me this, I must touch the mistake but lightly; yet a grievous mistake it is, as to the principle of testimony, and betrays great want of acquaintance with the practice of courts, which (however individuals may think of it, as applied in particular instances,) has been established upon the purest basis of justice and impartiality towards the interests of all. I presume no counsel could be found, who would enter into such a compact*; but, granting that such a precaution were to be taken, what benefit would there-

* I believe that barristers, when travelling the circuits, do not, or perhaps must not, lodge at public inns, upon the principle of avoiding intercourse with parties who may be concerned in causes committed to their management.

by accrue to the interest at issue, is not for me to consider: I shall merely advert to that which, in all likelihood, would be the consequence to the medical witness. Matters would go on so smoothly—with such unusual ease and perspicuity—with such astonishing coincidence as to the allegations contained in the opening address*—and probably the learned counsel, on the one hand, would appear so much more learned than usual as to questions, while, on the other, the witness would appear so much less at a loss in point of answers, that the gentleman on the opposite side, if capable of reading his own brief, must be struck with the phenomenon, and be naturally desirous of knowing how all this has happened†. The readiest

* Counsel are understood not to be at liberty to lay any thing before the court and jury, *in limine*, which they are not prepared with evidence to substantiate—a frequent *non sequitur*.

† The following quotation may be fitly introduced here:—"A difference between witnesses on points of little importance, affords no reason to suspect their veracity. These variations in testimony, occur every day in the transactions of common life, and may be explained on the commonest principle of human nature. Men relate facts as they observe and remember them; and the powers of attention, observation, and memory, are infinitely diversified. A difference in the manner of relating unimportant

way to obtain information, would be to ask the witness to clear up; and this, I suppose, is a measure as likely to suggest itself to a sharp barrister, as to me, a dull physician; if so, one of my brethren would, in all probability, earn that day's bread with the sweat of his brow. But, as this case is hardly possible, the real caution required for the practitioner, is to avoid wishing, and, above all, seeking for such a *supposed* advantage, which I trust I have shewn to be a mistake. If, in a way more consistent with ordinary practice, a medical man should be applied to by an attorney for information, with the view of maintaining a cause, I doubt whether he would be warranted in conceding, for a private

circumstances is perfectly natural, and what might be expected in the ordinary course of things: on the contrary, it is the exact coincidence in minute particulars that shews contrivance, and excites suspicion. — *Phillips*, chap. vii. sect. 2.

The inconvenience was noticed long ago. “Quintilian, in his *Institutes*, has a very elaborate discourse, the intent of which is to shew that many things are too opposite to be true; or in other words, that matters brought in as the evidence of a fact, have too much refinement, and studied management, to be admitted honestly as the proofs of what they are intended to support.” — *Watkins on the case of Fenning*.

purpose, that which he is liable to be called upon to afford publicly. Do we not thereby constitute ourselves a party? And is it consistent with the impartiality to be observed on our part, to accept a retaining fee? I decline going into this question, because, like an advocate, I would advert to nothing in the shape of fact that I have not evidence to prove; and, knowing no example of such a practice, I can put it only hypothetically*. It would be very awkward to be asked, after having sold one's knowledge and experience, "what have you received, or what do you expect to receive, for coming here?" It is a question that has been put, but I hope will never be addressed to a medical man.

But I have not shewn the witness the full amount of the risk he would run by a concerted examination. When taken to task by the opposite party, it must be granted, that the more positively he has spoken, the more he will be exposed to the consequences of speaking unadvisedly. To retract what has been decidedly affirmed, would be rebutting his own evidence; but if a thing has been

* The intelligent reader does not require to be told that such a fee is one thing, and that fair remuneration for expenses is another.

advanced cautiously, it may stand a little sifting, and probably endure a little change. Here I shall pause, with an admonition to such as may stand in need of it, to consider, while it is time, that they go to give *information*, which information will be applied for not only in a direct, but also in an oblique manner*.

* I ought to have noticed, when stating that witnesses are examined first for the party bringing them forward, and then to favour the opposite interest, that they are often *re-examined* by the counsel for the original side, in order to give them an opportunity of doing themselves justice. There are numerous examples of this in the Second Part of the Appendix.

CHAPTER VI.

*OF THE MOST ADVISABLE MANNER OF GIVING
EVIDENCE.*

To this chapter one might fancy all the lame portion of the community hastening, regardless of what precedes or what follows, in the hope that a miraculous healing will attend the dip. But, alas, my friends! this is not a pool for the cure of your malady. If such be your views of your own case, many of you must be too far gone to hope for relief, and if so, all you can rely upon for comfort is the chance (that has happened to some) of being able to avoid exciting causes. There is no nearer road to the realization of your wishes than to begin at the beginning of that knowledge which alone can stand you in stead, and which, as it is not the object of the whole *volume* to impart it, you ought not to expect from any individual chapter. If this attempt will at all aid my brethren of the me-

dical profession, it must arise from consideration of the whole ; for the distinctions I have aimed at are merely for the convenience of the reader, and not with any view to a symmetrical arrangement of the work. I attach little importance to them myself, and consider a perusal of the whole as indispensable to him who really desires to profit by the subject.

The oath administered to witnesses in the English Courts binds them *to speak the whole truth, and nothing but the truth, touching the matter in question*. Explicit as this formula may seem, and convenient as it may often be found on the part of a lawyer, for the purpose of frightening a timid witness—plain as it might appear to make the duty of the witness, even in his own estimation—it seems applicable chiefly to matters of *fact*, and hardly consistent with that which should be the prescriptive rule as to questions of *opinion*. We have heard of anomalies in the sense of vision, causing the person in whom they existed to mistake one colour for another. Should, therefore, a man, through such vitiation of his perceptive powers, swear that a red coat was a black one, we could not receive his statement as evidence, although the honest expression of his belief.

Deviations equally great take place — more frequently, perhaps, than we are aware of, in matters of opinion; and yet those who utter them may be as little chargeable with wilful or conscious error, as the unfortunate being who labours under such a morbid affection of the optic nerve as that alluded to.

As to matters of opinion, therefore, it is natural to ask, in what way should the whole truth be displayed? in what manner is it to be communicated on points of science?

Some have affected to lay down one rule, while others have pretended that the opposite would be more suitable; as if it were possible to furnish any rules for behaviour under circumstances that vary like the aspect of the clouds, and cannot be fixed as a basis for instruction. But although we give up the pretence to talk in a didactic tone, we are fully entitled to rely upon a general principle, the knowledge and applicability of which must, after all, be acquired rather through an innate sense of propriety, than derived from any formal attempt at instruction.

I understand that certain teachers of other branches, (for the lesson could hardly be inculcated by one who knows this subject,) de-

sire their pupils, when called into a court of justice, to be niggard of their knowledge, and to utter nought beyond a bare answer to the question*. I remember being in company with a witling when he bestowed a *farthing* upon a beggar, accompanying the gift with a very grave admonition *not to lay it all out at once*; and I hesitate not to add, that the injunction, though it may be appropriate, as far as the teacher is concerned, is mere mockery of the pupil, unconscious, as he must be, of the nature of the occasion to which his inconsiderate preceptor refers. I cannot imagine, viewing the caution in the abstract, how it could be reducible to any purpose of practical utility. Could we suppose both interrogator and respondent to be equally and consummately learned on the point at issue, the one would, in all probability, ask such questions only as the other would be most readily able to answer; but even in such a state of things, unhopèd-for as it may be, the concise form of reply might not suit the judges, jury, cross-examiners, &c. and

* This may be a very proper caution on the part of an attorney to an apprehensive witness, concerning a mere matter of fact.

the *advice* must be founded (if founded in any thing, but utter ignorance of the Forum,) upon a supposition that we are only to be asked questions relating to matters of fact, such as what the hour was when we received a coroner's summons, or how long it took us to travel to the inquest. But are we not generally called upon, because the court knows it cannot of itself rely upon eliciting the truth in matters of *science* and of *opinion*, that demand the undivided attention of men, supposed to be equal as to preliminary education, preparation, and acquirements, with the members of the judiciary order themselves, and who have devoted their lives to the exclusive study of these matters? It is absurd to expect that questions can be so framed, that a simple *yea* or *nay* should answer them. I anticipate, for my own part, no small annoyance, perhaps occasional censure, and it may be, even rejection as a witness, from a determination not to be cramped by the narrow views of an advocate, in giving professional testimony; but being sufficiently forewarned as to the impropriety of hurrying through my business as a witness, I should be loth to yield to an overbearing counsel, an inglorious

triumph over the importance of medical science, or the interests and respectability of medical men, as far as I may be capable of perceiving that these are endangered.

Once more, with regard to this very inept injunction. Can its authors guarantee their uninitiated and unsuspecting pupils, that such meagre replies as they are considered to make (supposing that the advice conveyed with it the power of Lacedæmonian concision) will prevent the advocate from repeating, or varying his questions, or from amplifying the course of his examination? Really, the thing is too absurd to be dwelt upon.

Others again recommend that we should say every thing that occurs to us, relative to the point at issue; and of the two such an injunction is the more reprehensible. In many cases, this is advising to the performance of impossibilities. There are some who might, by such a course, save the time of the court, and convey, in the most convincing manner, the clearest views of the truth; but for one who could accomplish this, there are many who might in vain attempt it. Supposing, however, that in all cases it might be accomplished with equal advantage, it is not always permitted; and many instances

are to be found, where the attempt has been prevented*. It would not always suit the purpose of the lawyer, who, knowing what it will be desirable to elicit, and apprehensive, perhaps, of something coming out that his object requires should be concealed, will studiously put his questions in such a way, as shall mould the intelligence of the witness to the purpose†. Among the few, but very apposite observations on evidence, with which we are favoured by the authors of a work that at present deservedly forms the standard of our medico-legal knowledge, is an overwhelming of the court by a *flow of garrulity*. Upon this it may not be impertinent to remark, that a witness may gallop off in this way, and perhaps proceed to some distance—*sed cui bono*? “Stay a little, and we shall have done the sooner,” is reported to have been said on some such occasion by a judge; and the witness who plays such a prank will have to begin again, and go over the same ground with deliberation. It is indispensably necessary that the evidence

* See the evidence of Dr. Hamilton, in *Hatharway's* case. Appendix, Part II.

† Look at the evidence of John Hunter, in the Appendix.

should be written by the judge, if he has to recapitulate it to the jury ; and such is the practice* : consequently, the statements of the witness, whether elicited piece-meal, by a chain of interrogations, or given in the form of a connected narrative, must be uttered with that slowness and precision, which partake rather of the nature of dictating to an amanuensis, than an attempt to outstrip a stenographer. This being the case, I am at a loss as to dissuading against a practice that can hardly be contemplated. One thing appears very manifest, viz. that a witness who might be thoughtless enough to indulge in such a style of address, and might at the same time be permitted to proceed a certain length, would be very likely to lay himself open to a severe cross-examination, by furnishing hints to the counsel, that a more cautious and considerate person would not be so likely to do.

“ We recommend the witness,” say Messrs. Paris and Fonblanque, “ to steer a middle

* The notes thus taken are often referred to as documents : and I have seen one of the best presiding judges of the day, who has the misfortune to be very deaf, copying the statements of the witness from the notes of his neighbour.

course, first, answering patiently, distinctly, and tersely, the questions put by the counsel on both sides, the court, and the jury ; and if none of these elicit the whole truth, and any material point remains to be disclosed, the presiding judge will always admit, and gratefully receive, the additions or explanations which may be necessary to the ends of justice*.” This recommendation is dictated by correct views of the matter, and is precisely the caution I should think it my duty to give. But I feel it necessary to be rather more particular, and to explain more fully to my brethren some things, that are not laid down with sufficient clearness, in the foregoing passage.

Let me then follow up the caution of these gentlemen as to the article of *patience*. Provide yourselves with a large stock, and ‘do not lay it all out at once.’ If you go forward to an occasion of witness-bearing, whose interests are of magnitude, eager to get through the business, and pass to some one more agreeable or more profitable, you will be disturbed in the discharge of your duty, your usefulness will probably be destroyed, and you

* Medical Jurisprudence, chap. i. page 164.

may then save as much character from the wreck as you can. And let me present the same lesson in a form somewhat more familiar—*Keep your temper !* There, the lawyers themselves acknowledge, lies the great secret. Be not accessory to making your examination a *cross* one, in the sense alluded to in the sequel*. You are cautioned to speak *distinctly and tersely* : and this quotation I shall elucidate by another. “The important duty which the medical practitioner has to perform, when he delivers his testimony before a court of justice, should be closely defined, conscientiously felt, and thoroughly understood ; his opinion ought to be conveyed in a perspicuous manner†.” Thus, to patient consideration of the merits of the question that may be put, or of the case

* In the case of *Whistelo*.

† Haslam, — *Medical Jurisprudence, as it relates to insanity*, page 3. “When a physician or surgeon is called to give evidence, he should avoid, as much as possible, all obscure and technical terms, and the unnecessary display of medical erudition. He should deliver also, what he advances, in the purest and most delicate language, consistent with the nature of the subject in question.”—*Percival*. But I must stop quotations ; a few more will lay me under the necessity of exhortating to the study of *logic* and *rhetoric*. Witnesses, however, who may have dipped in these streams, will not be the worse for it.

you may be called upon to describe, you must add attention to fit and appropriate language. In private life, when a party does not comprehend what is said by another, the cause may be ascribable to deficiency of apprehension on the one side, as justly as to incapacity for imparting on the other; but surely, where a whole court is unable to perceive the meaning of a witness, it is more likely that *he* shall be a stupid fellow, than that an assembly of lawyers shall be deficient in the acuteness that proverbially belongs to them. But I should, in my own case, be ambitious to go a step beyond this. I should like not only to convey my meaning in terms that they might not be at liberty to misinterpret, but such as they could receive in no sense but the proper one. We read of the naked truth, and the nearer this familiar standard of simplicity we approach in our descriptions of it, we shall do the more good, and suffer the less annoyance.

Whether the advice of my judicious fellow-labourers in this branch of public interests be approved of or not, whether our readers decide for ‘costive retention*,’ or a flow of

* Paris and Fonblanque, chap. i. p. 164.

garrulity, there is one very important point which they will do well to look to—*Let them THINK !*

Exceptions as to general facts, or established practices relating to the point at issue, claim very marked notice in this place. There is a wide difference between founding an opinion, or giving testimony upon rare deviations from the course of nature, or of events*, and omitting to notice exceptions that belong as strictly to the rule†, as the circumstances that constitute it. A scientific witness would be truant to his own character if, when publicly called upon to speak of his knowledge, he gave an imperfect or an erroneous statement, which it might fall to the share of others to correct; and it does appear to me, that it would be little more in his favour if he corrected himself upon compulsion. The advocate who

* As appears to have been most absurdly attempted by a great transatlantic physician. See the case of Paternity, in the Appendix, Part II.

† This expression may be caught at by the critic, who recollects the phrase, “Exceptions are not of the rule.” I shall take the liberty to be beforehand with him. It is one quality to be part of a thing itself, and another to belong to it. Thus the key is no part of the lock, but belongs to it, somewhat strictly; and a thousand examples of the same nature might be quoted.

has to conduct the indirect examination, and he also who might re-examine, through whom alone can the witness have the opportunity of making such corrections, may, either from being unacquainted with the whole bearings of the subject, or from other causes, omit to furnish him with it. The report goes out to the world, and the testimony of the medical man runs the gauntlet of all those who may be able, or disposed to display its defects, and more serious vices. An example figurative of what is here alluded to, took place under circumstances of unusual interest, not long ago; and a lesson was drawn in one of the professional journals, which I think may be appropriately quoted. Speaking of one of the witnesses, it is observed, "This gentleman seems to have been truly unfortunate in the grounds of his opinion. It would appear, as if he had formed it from the details afforded by a servant; and that, a discarded one. *In his cross-examination, also, he admits exceptions enough to eat up his evidence-in-chief.* It is with no small regret, that we find ourselves compelled to animadvert upon the *testimony* deportment of men of eminence; but it has been the fate of the *most eminent*, occasionally, to have given too much scope for

animadversion on similar occasions: and we seize the occasion to say to our younger brethren, that to us, who are in the habit of looking at medical practitioners in the situation of witnesses, with a scrutinizing eye, they appear in a disadvantageous light, when they allow most important, and most manifest parts of the truth to be *wrung from them* by a cross-examination*.”

It is surely unnecessary to say any thing more about speaking dubiously†. It would be a decided dereliction of duty to speak thus, when we can do it positively; but it may be often right to speak even in that manner. Leaving the fact in doubt, is not leaving the accused in danger; but the caution, actually required here, it is hardly possible to convey in concise language. In a more circumlocutory form, it appears to me that the reluctance of these persons, relates to the risk that may follow, should they leave in doubt any point upon which they may be required to speak, and that they consider it their duty to speak positively, or plead total ignorance. Now

* London Medical Repository, Feb. 1824: case of *Leach v. Veitch*.

† Vide *suprà*, page 50.

this is not fair, either towards science, or towards the persons interested in what is going on; and I should prefer giving even an undecided opinion, where the subject is not known to have an accredited form, otherwise, its real importance may be underrated; or it may be unjustly considered to be a visionary hypothesis, when it merely defies satisfactory explanation.

In consequence of our being sworn to disclose the *whole* truth, we may be called upon to reveal secrets confided to us in professional confidence. This involves a very delicate consideration, and one that I apprehend is but imperfectly understood. "Bar-risters and attorneys, to whom facts are related professionally during a cause, or in contemplation of it, are neither obliged nor permitted, though they should so far forget their duty as to be willing to do so, to disclose the facts so divulged, during the pendency of that cause, or at any future time." "This rule of professional secrecy extends only to the case of facts stated to a *legal practitioner*, for the purpose of enabling him to conduct a cause; and therefore, a confession to a clergyman or priest, for the purpose of easing the culprit's conscience, the statement of a man to his private friend,

or of a patient to his physician, are not within the protection of the law. We should certainly think, that the friend or the physician who *voluntarily* violated the confidence reposed in him, acted dishonourably; but he cannot withhold the fact, if called upon in a court of justice*.”

I am by no means able to venture upon a question of such magnitude, and hardly know how to choose language for the conveyance even of a doubt for others to satisfy. That the practice of the courts in Great Britain is in strict accordance with the foregoing view of the matter, every one well knows; and it may be equally certain, that they possess the *right*, as well as the *power* of compelling witnesses to such disclosures; but to my apprehension it is not equally clear. A precedent is, in law, a mighty authority; and I am quite satisfied that a point which has been so often, and so uniformly ruled, will never be ruled otherwise in the courts of Westminster Hall†; I am also well aware that to *law*, and rules

* Peake, pp. 173, 175.

† Perhaps it may not be impertinent to call the particular attention of the reader to the nature of the courts that sit there. In the Appendix, will be found illustrations as

of court, we must yield, or the administration of justice would be impeded. But, although *satisfied* on these points, I am not *contented* that *we* should be placed beyond the pale of those, to whose private, and confidential dealings with their fellow-citizens, such respect is shewn. I will not go at large into the question, my design being merely to draw the notice of my brethren to the circumstance, and to put them upon their guard as far as possible ; yet will I say that circumstances may occur, in which a man of a delicate and honourable mind, being the depositary of certain things communicated to him either under the seal of professional, or private confidence, (for the distinction is not to be entertained here,) would endure much ere he would reveal. But such a situation is peculiarly distressing, because (on the supposition that resistance might be maintained) he not merely exposes himself to personal suffering, but incurs the charge of disregard to the interests of justice, and dereliction of duty to his country ; in other words, he will be considered as allow-

to what has been ruled on this point : in one instance in the *House of Peers*, which, on the occasion in question, sat in Westminster Hall.

ing the private claims of an individual to set aside those of the public weal. Let it be distinctly understood, before I go farther, that I am not alluding to the case of the priest and a culprit's conscience, but to matters, it may be, of the last importance to the character of individuals, and the peace of families, arising out of circumstances of a purely private nature, and in no way relating to affairs of state or municipal interest. It will at once strike the manly mind that, in regard to females, we might be called upon to reveal that of which the promulgation would, to them, be worse than death itself.

All writers on this subject are not of the same opinion. In "Medical Jurisprudence," it is noticed in a cursory manner, and we are informed, (rather I suppose, by Mr. Fonblanque, than by Dr. Paris,) that "when the ends of justice absolutely require the disclosure, *there is no doubt** that the medical witness is not only bound, but compellable

* This very form of expression, however, excites suspicion in my mind, whether lawyers are themselves quite satisfied that the thing is *certain*. Were I disposed to play the critic, I should say that *the absence of doubt* as to a thing, and *the certainty* of it, are not the same; but this concerns language only. Still, I like precise meanings.

to give evidence, ever bearing in mind that the examination should not be carried further than may be relevant to the point in question: of this the court will judge, and protect the witness accordingly*.” This is unquestionably sound doctrine, as drawn from the *practice* of our courts; but as, in my very humble apprehension, the matter seems to be one remounting, in its original bearings, rather to a question of general right, than of the law of any particular state, I beg to quote, from a good French writer on Legal Medicine, a sentiment of rather an opposite tendency. “The tribunals neither ought, nor have the power to exact from a physician, the revelation of a secret confided to him in consideration of his office: at all events he may, and ought to refuse. Religion, probity, nay the rights of society, make this a law. Still more are we bound to secrecy, when not compelled to disclose. Upon this point, casuists and jurisconsults are of one opinion†.”

* Vol. I. page 160.

† Belloc, *Cours de Med. Leg.* page 17. The author gives rather a curious illustration, which I do not think necessary to introduce, the principle of which is, that in a case of pecuniary reference between a medical man and his patient, where there is a delicacy to be observed, those who are appointed to arbitrate, are as much bound to secrecy, as

Zacchias enumerates *loquacity* among the errors of physicians cognizable by law, and censures it as particularly deserving of punishment, when it leads to the disclosure of secrets ; upon which he alludes to the clause binding to secrecy, in the celebrated oath of Hippocrates, as an obstacle on the part of those who have taken it ; and, in his famous casuistical way, first puts a case or two, and then leaves us the full force of the dilemma to contend with. I must add, that he distinguishes between judicial revelation, and that which is not—*nam in judicio tenetur omnino veritatem detegere* ; yet even here he seems to be in the same predicament as myself, with regard to the original merits of the question, for he does no more than tell us, that to make such disclosures, *is held to be necessary**.

the party litigating, viz. the physician. But upon this, I beg to say, that what may be confided to one person, may be utterly incommunicable to a second, however well the parties may be assured that it will not reach the knowledge of a third. The sentiment, if it be that of French authorities in general, is the more deserving of consideration, as it relates to a system of judiciary economy which recognises the propriety, and pursues the practice, of torturing and entrapping a person under accusation into an acknowledgment of his guilt.

* “ *Quæstiones Medico-Legales*,” lib. vi. tit. i. q. 3.

Perhaps the apparent freedom of these remarks, may lead to farther inquiries on the subject: in the mean time, and with a view to my own justification for having taken the liberty to express unwonted anxiety as to this point, I may repeat the grounds on which I think myself warranted in having done so. In the first place, *lawyers* are not only privileged in maintaining secrecy, but are not permitted to violate it when inclined; and justice should, in my apprehension, respect private delicacy and reputation, as well as property; more especially when the former are the more valuable in the estimation of the possessor: and secondly, as I consider physicians to be virtually bound by the spirit, if not by the letter of the Hippocratic oath, I am not satisfied that the strong and overbearing voice of authority would be adequate to release me from the misgivings of my own mind, after having revealed matters that I never should have known, but from an implied belief in the force of my professional obligations to be secret. In order, however, to discharge my duty properly to such of my brethren as may not view the matter in the same light, I must add, that in the great majority of cases where disclosures of the kind are called for, there

- may be no real breach of confidence, because society in general receives the authority of courts, as paramount to all obstacles and private considerations ; so that, in yielding to such authority, a professional man will be fully acquitted, even in the opinion of those who may be the sufferers: of course, therefore, there is an implied exception in regard to such a call, and the practitioner may be less embarrassed by the scruples of those whom he may commit, than by his own.

But I cannot dismiss the subject without cautioning the young practitioner, as to his mode of proceeding under such circumstances. To an advocate no such revelations are to be conceded, let him demand them ever so urgently ; and I should hold that barrister personally amenable who would presume to ask me to disclose a secret, as a matter of course, merely upon his requisition. A *gentleman* will certainly hesitate as much in requiring, as another would in affording such disclosures ; and they are never to be made, but by express mandate from the bench. That being uttered, I can disapprove of no one's conduct in obeying. The expressed opinion of the judge will be a full indemnity for the witness, as far as all *extra-thoracic* dissatisfaction might exist ; but

I cannot be satisfied until I shall have expressed my regret, that when the sacred barrier of private confidence must be thrown down, it is to be done in so public a manner. Surely, on such occasions, the idle and unconcerned at least might, with great propriety, be excluded, as well as on others, that I need not specify.

CHAPTER VII.

THE SUBJECT CONTINUED — MORE PARTICULARLY WITH
REGARD TO THE OBSERVANCE OF DECORUM.

IT may be considered very presumptuous on the part of an individual, as private in station and obscure in character, as any to whom the admonition may be offered, to enjoin the observance of *decorum* on members of a grave and dignified profession, especially when called to the discharge of duties that place them very conspicuously under public observation. It will also be thought, and probably said, that common sense and good manners will assuredly prevent any dereliction in this respect: and so assuredly they will — when common sense and good manners fall to every body's share. Till that shall be the case, however, it is much to be feared, that, now and then, a defaulter may appear; for supposing which the sole reason that I shall assign, is the fact

of their appearance being already upon record*.

In the commencement of the volume I pledged myself to take a *free* view of the situation of medical men as witnesses†; and in doing so, I have been unable to shut my eyes to specimens of questionable accuracy as to demeanour. Some of these I have thought it my duty to transfer to that portion of the book which consists of examples, both for imitation and evitaton. In this place, I shall endeavour to draw some inferences, that to men of sense and good manners can give no umbrage, and to others, if they are capable of reformation, may not be without their use: at all events, to make free with the technicalities of another and more reforming profession, in the execution of the task *I shall discharge my own conscience.*

By the observance of decorum, I do not mean that we should clothe ourselves in a particular garb, or wear an especial countenance, or affect any occasional fashion of speech or behaviour. We are not to mount

* To point to particular examples is more than I dare—but there are some in the Appendix.

† Page 5.

the stilts of hypothetical or technical jargon, or attempt to mystify those around us by abstruse allusions, and pedantic expressions. Enough has been said as to the choice of words and the framing of statements; let us remember that we are to make our knowledge useful to those who are not initiated, and to do so we must make it intelligible. The age of mummery and mystery is gone by, and we must maintain in the Forum, as we should do elsewhere, the character of *gentlemen*, as well as of physicians or surgeons. Let us go forward in our natural character, armed with sobriety and circumspection, and adorned with dignity and modesty; for on no occasion can the *suaviter in modo* impart greater efficacy to the *fortiter in re*.

There are two objects to which I would more especially direct the attention of the medical world, in discussing the observance of decorum. It should respect the profession to which we belong, and the occasion to which we are called.

With regard to the *profession*, separating it from the contamination of *traffic*, with which it is unhappily and unduly associated in too many minds, there is none so truly valuable to society, or more noble and li-

beral in itself. I shall not stop to make good the assertion; its truth is well known to the rightly constructed mind, and it might be a vain attempt to impart conviction elsewhere. Its interests are so identified with our own, that too much solicitude cannot be displayed in their maintenance. Could it, on occasions like those under consideration, be represented by such only as are competent to the task, the advantage would be mutual between society and ourselves*. It is impossible to resist the wish that special qualifications were required by law, on the part of medical witnesses. There is something of this nature on the continent; and though one of the last of my countrymen who would wish to see the customs and institutions of Great Britain shaped according to foreign patterns, yet I think we might in some matters take a hint from and improve upon their practice.

The interests of science are at risk, and the ends of justice likely to be obstructed, by the practice of permitting those who are beginning their studies, to stand forward on occasions where the most learned and experienced are sometimes at a loss how to acquit

* See Appendix, Part I.

themselves. If we wanted an opinion on a point of law, we should not think of applying to an attorney's clerk, however demure, decent, clever, or attentive, he might appear ; and yet the counterpart of this takes place continually with regard to medicine, by the practice of sending and receiving hospital pupils, and surgeons' or apothecaries' apprentices, to give opinions on matters far more difficult and intricate than it is possible to conceive, as to the consultation or construction of a passage in the statute-book. How the opinions that emanate from such quarters, can be received with satisfaction or complacency, (if important information be really wanted,) it is difficult to explain, except upon the humiliating presumption that medical testimony at large is held in no great estimation. Yet it is not uniformly so, and is often a very important engine in the operations of justice. The uncertainty of medicine has long been proverbial in the opinion of many who might know better, and who doubtless would form a juster estimate both of us, and of our *science*, were it displayed before them in reality, instead of some unworthy substitute, which alone can be expected from such incompetent hands.

I mean neither unkindness nor disrespect

to our young friends the students. They are commencing an honourable career—a useful, but an arduous one; and, ere they reach that point of their laudable ambition, where the manner in which their steps may have been traced, will greatly influence their stability and security, they will have causes enough for anxiety, and perplexities in superabundance, without prematurely endangering the interests of that profession, upon which their own must depend. The application of the medical sciences in aid of the administration of public justice, should be among the last of the studies to which the attention of the pupil should be directed. A greater extent of preliminary acquirements is necessary, than for any other practical branch; yet is it preposterously the very first of which he is called upon to discharge the duties and incur the responsibilities; although to receive any instruction whatever concerning it, never enters the comprehension either of himself, or of those who should direct the course of his education*.

But let me pass from the heirs of our professional rank and possessions, to those

* I reserve a few observations on this point for the Appendix.

who are ostensibly the proper representatives of the medical community on such occasions. In considering the decorum due to the profession, it is impossible to overlook the deportment of practitioners towards each other. We are not unfrequently called upon to give our opinions as to the character and conduct of our brethren. This must inevitably be the case, when the question is one that relates to the claims of a practitioner seeking recompense for professional services, or when the efficacy of these services is impugned*. When we do think well of our brethren, such a duty must be indeed pleasant; for there is nothing more gratifying to a generous mind, than to bestow commendation on those who deserve it. Affirming, (from the views I have been led to cherish of the true influence of our pursuits upon the duly regulated character,) that kindness and generosity are particularly congenial to the medical *philosopher*, I am under the necessity of adding, that a disposition to snarl and bite is *unnatural*, as well as unamiable. Sometimes, however, it is our duty to disapprove; but of doing so, there is a choice

* In the Second Part of the Appendix, there will be found several cases illustrative of this.

of modes. That case must be almost incomprehensibly flagrant, which calls upon us to enter voluntarily or gladly on such a task, whether it is to be performed officially, or otherwise; but as our present business hardly admits of contemplating a *voluntary* appearance for such a purpose, the caution may be restricted to the manifestation of triumph, gratification, or any other disposition at variance with that regret which the misconduct of one of our body ought to inspire. It is said, that the world is not a judge of medical character, but I do not see any occasion at present for examining the truth of this assertion, knowing that the liberal and well informed of the community are disposed to think well of us, and to appreciate (what cannot be denied without betraying ignorance of that which it is shameful not to know) the liberality of medical men*. Let us beware of committing felony on our own reputation, by submitting to the baneful action of a different spirit. The great safeguard will be the habitual cultivation of liberal modes of thinking, which will incline us to do what we ought ever to aim at—to cover a brother's failings. Far be it from me to trammel

* See Appendix, Part I. “*Medical Liberality.*”

the profession with obligations to screen from the consequences of criminal ignorance, one who may have presumed to stand in a place which he was utterly unqualified to occupy; but these are not often the objects towards which attention is in this way directed. I think the cases of legal interference, in which the proceedings have been of any importance, have been generally those of men who have maintained a share of reputation; and when, upon such occasions, recourse has been had to the opinions of their brethren, suspicions have not been wanting as to the purity of motives that have led to reprehension on their part.

In the northern division of the kingdom, where considerable difference is still observed in the formalities of the tribunals from what we are accustomed to see in the English courts, it is the practice *to purge* the witness of partial counsel or inclination, and also of malice*. It may be an additional motive to purge ourselves in like respects, if we recollect that we, in our turn, may be ex-

* In some of the cases in the Appendix, the reader will find a preamble to this effect, in the depositions of medical men. See, for instance, that of *Nairne* and *Ogilvie*.

posed to the same ordeal—let us do then as we would be done by. “The quarrels of physicians,” says Dr. John Gregory, “when they end in appeals to the public, generally hurt the contending parties; but what is of more consequence, they discredit the profession, and expose the faculty to ridicule and contempt*.” And where, let me ask, can such appeals be made so publicly, as under the circumstances immediately in view?

But the decorum in question must also respect the *occasion*. And what is the occasion? It is one upon which a witness expects at least to be made the sport of lawyers, if not to be torn to pieces by wild beasts. It is wrong to entertain such ideas, and not very creditable to lie under such apprehensions. We should bear in mind that barristers are *gentlemen* of the same grade as ourselves, and as desirous of maintaining their character in that capacity as we can possibly be; that although they are *privileged*, in the execution of their office, to try us severely as to the extent of our knowledge, they are not necessarily *qualified* to do so: we should remember

* Lectures on the duties and qualifications of a physician.

also, that they have no *right* to ask a single question, but as the mouth of the judge. If this be not enough to set the professional mind at rest, let it be engraven on the memory — that when we encounter a lawyer professionally, he is under the same obligation to treat us with courtesy, if not humanity, as we should be to display the same qualities in our deportment towards him, if called to the side of his sick-bed. I assure my brethren, that the members of the Forum know this, and will not lose sight of it (generally speaking), unless compelled to do so, by the errors of the witness himself.

Let us then go to this duty without a humiliating apprehension, which will infallibly injure us. Let us leave bad temper and a suspicious disposition — leave impatience, if these be the infirmities of our nature, at home. Let us carry with us our share of that commodity so necessary on all occasions, viz. self-respect; and clothe ourselves in our best manners, and choicest suit of intellectual garniture. Let us maintain the spirit, and observe the deportment that should exist between gentlemen; and if there should, by rare hazard, occur any cause for dissatisfaction, comport ourselves even then in the same capacity. I grant the occasion is one that

brings inevitable uneasiness to many; but I cannot help thinking, that to a competent witness it is very much of a bugbear in reality. I will admit, that now and then a disposition may be manifested to treat a witness unfairly, and that it is hard to say to what one may be provoked who allows this to take effect on his irritability; but the proper way of defence for him who may be assailed in this manner, will be an appeal to the court.

Of all things we should be cautious as to trying the lawyer at his own weapons. It has been well represented by a medico-legal writer, whose own conduct under a most teasing and overbearing course of examination I shall have occasion to exemplify, that “the lawyer’s object being the interest of his employer, for the fulfilment of his duty he is frequently compelled to resort to a severity of investigation which perplexes the theories, but more frequently kindles the irritable feelings of the medical practitioner: however dexterous he may shew himself in fencing with the advocate, he should be aware that his evidence ought to impress the judge, and be convincing to the jury*.”

* Haslam, Medical Jurisprudence, &c.

The practical application of this may be considered very simple; at all events it must be left, in great measure, to the circumstances and particular taste of the individual concerned; and, with a single additional hint, I shall pass to another point, hoping that what has been adduced may have the effect of turning the mind into the proper channel for strengthening itself for the contest. I know some who are perfectly capable of trimming even a lawyer, and in a way that would be effectual enough. Such will not be offended with me, if I intreat them to reserve their *wit* for other occasions. If to them, personally, the indulgence of the impulse might not be dangerous, the example would be highly so — and I am persuaded that they will consult their own dignity and interest better by not treating lightly the serious business of a court of justice. In some, the natural impulse is so powerful, as to render it impossible not to retort, when assailed, with that very dangerous weapon, and upon such it might be vain to enjoin absolute forbearance; I shall, therefore, restrain my exhortation to putting a check on the propensity, and to avoid any attempt to give what is termed a *set down*. If such an upshot supervenes as a matter of

course, it may be all very well: but I shall conclude this chapter with an exemplification of the error against which this last caution is more particularly directed.

Not very long ago, an apothecary, who had previously been clerk to a barrister, was examined as a witness in the Court of King's Bench. One of the most eminent counsel of the present day, was particularly desirous to ascertain from him how long he had changed his calling; and at length drew upon himself the following piece of intelligence: "I began the study of medicine at a much earlier period of life than the late Lord Erskine did that of law; and he attained to far greater eminence in his profession than ever you will!" For this retort, he was deservedly chastised by the judge, who, in recapitulating the evidence, very properly remarked, that whatever that witness might have learned in his two professions, he had not learned manners—for the answer he had given to Mr. — was very impertinent.

CHAPTER VIII.

OF THE RESPECTIVE CLAIMS OF EXPERIENCE AND
AUTHORITY, AS GROUNDS OF OPINION IN MATTERS
OF SCIENCE.

THE first of these terms is meant here to designate the knowledge an individual may have derived from what he himself has seen, or rather done, in the practice or active exercise of his profession ; by the latter is to be understood, a deference to the recorded or imparted knowledge of others. The term *experience*, in this sense, has but a limited application ; and it is not unlikely, when a lawyer is asking a medical witness as to his experience, and the latter undertakes to answer concerning it, that they may not be talking of the same thing. A moral philosopher, probably, means something different from a physician, although both use the same word ; yet the term has *generically* the same import, and we shall find, even among the writings of metaphysicians, definitions and

descriptions of experience that may, with great propriety, be applied to the *species* of which there is now question.

As I do not aim at profound views of a subject that has not yet received the slightest share of attention among the talented men of the profession, and as my present object extends no farther than giving them a hint as to the *growing* necessity for bestowing some attention upon it, I shall restrict my own observations to very narrow bounds, and select a few pertinent remarks from a well-known production, which has formed the ground-work, and furnished the materials of many an abstract, not only of *experience*, but even of *evidence* itself.

Throughout certain writings of the celebrated Dr. Campbell, and particularly in the course of his argument with Mr. Hume on the subject of miracles, there are several observations which I cannot do better than apply to our present purpose. It is true that they are not directed to the economy of natural science, but they are perfectly susceptible of the *specific* application just alluded to; indeed they are, in my apprehension, almost as much to the purpose as if they had been written expressly for it, when separated from their context. In the course of ani-

madverting upon the vague and mutable language of his antagonist, the Dr. proceeds to define, for him, what Mr. H. himself implies, but does not express, as to *experience*:—dividing it into “personal” and “derived,” allotting to each its character, as follows. Thus, *personal experience* “is founded in *memory*, and consists solely of the general maxims or conclusions that each individual hath formed from the comparison of the particular facts remembered by him:” and *derived experience* “is founded in *testimony*, and consists not only of all the experiences of others which have, through that channel, been communicated to us, but of all the general maxims or conclusions we have formed, from the comparison of particular facts attested*.”

But both *varieties* of experience (for so they must be called, if we apply both definitions to the medical *species*,) are referrible to a common origin. Dr. Campbell makes no account of technical experience, nor indeed of evidence in science that is not mathematical or *demonstrative*†; but so clearly do

* Dissertation on Miracles, Part I. sect. 2.

† See Note *suprà* at page 14, from Gilbert's Law of Evidence.

the subsequent passages instruct us in the nature of that evidence now under consideration—namely, evidence as to opinions in matters of *natural* science, that I cannot pass them over*.

“ The sources of experience are two, sense and memory. The senses, both external and internal, are the original inlets of perception. They inform the mind of the facts which, in the present instant, are situated within the sphere of their activity, and no sooner discharge their office in any particular instance, than the articles of information exhibited by them, are devolved on the memory. Remembrance instantly succeeds sensation, insomuch that the memory

* I am aware of the *dilemma* into which I should be led, were I to follow this able polemic (whom I cannot but consider to have held the strong end of the controversy) to the full length of his argument. The testimony of witnesses would go no way in a court of justice towards establishing an alleged fact, in opposition to the familiar course of nature; whereas Dr. Campbell's strong point, is the credibility of the apostles as witnesses of those miraculous displays of divine power, from which some of the evidences of the truth of our religion are drawn; and in favour of repetitions or imitations of which, in later ages, no proof can be acknowledged. But though, to a certain extent, I gladly press him into our service, we are not called upon to adopt the whole of his reasoning or illustration.

becomes the sole repository of the knowledge received from sense ; knowledge which, without this repository, would be as instantaneously lost as it is gotten, and could be of no service to the mind. Our sensations would be no better than the fleeting pictures of a moving object on a camera obscura, which leave not the least vestige behind them. Memory, therefore, is the only original voucher extant of those past realities, for which we had once the evidence of sense*.”

Memory then plays a most important part in the economy of experience ; it is its parent : but the facts whence we derive that belief or that knowledge, the display of which is ascribed to experience, may be forgotten ; and it is through the agency of another mental faculty, that we actually profit by experience, viz. association : the efficacy of which consists in preserving the knowledge imparted by experience, when all the facts upon which it was built are forgotten.

* Philosophy of Rhetoric, Book I. chap. v. part 2. Our author says elsewhere : “ It derives its origin solely from memory ; and if we had not given an implicit faith to memory, we had never been able to acquire *experience*.” *Dissert.* Part I. sect. 1.

But some may accuse me of endeavouring to be abstruse. In medicine I fear that we often use the word *experience*, where we should be content to employ *analogy*. This has been stated to be a more indirect experience; it is certainly a more easy source to draw from, and is often considered as a great proof of practical knowledge; whereas it displays little more than a turn for making comparisons. It is often the trick of the ready-witted; while experience does not impart the power of comparing, but, on the contrary, is itself the result of a comparison of particular facts remembered.

Let us now turn our attention to *authority* in a comparatively abstract sense. I have here applied the term to signify the acceptance and use of knowledge imparted by others. In different words, it is the application of their *testimony* to the satisfaction of our own minds concerning the truth of any given matter; and in this way it may be said to merge in *experience*. Thus, says our author, "as on memory alone is founded the merely personal experience of the individual, so on testimony, in concurrence with memory, is founded the much more extensive experience which is not originally our own, but *derived*

from others*.” I have had occasion already to introduce some allusion to the degree of credibility due to memory as the prompter of testimony†; and it is rather an unlooked-for conclusion to which I am now led, that *experience* is not so well supported in the weight it should give to evidence, as *authority* appears to be. However, to avoid a clash of subtleties, and to give more force to the doctrine I am inclined to maintain, I shall hasten to my proper business, and reserve the weight of another metaphysical passage or two for occasional application.

The general, perhaps I am warranted in saying the universal practice, in our courts, has been, to demand an account of our *experience*. This arises from the narrow space within which it has been found necessary to confine evidence; and, in one point of view, the lawyers are right in adhering to the practice. When a witness speaks from *experience*, (in the common acceptance of the term,) he speaks apparently of his own *knowledge*; but were he to make a statement

* Philosophy of Rhetoric, Book I. chap. v.; and Dissertation on Miracles, Part I. sect. 1.

† Page 24. See also the note in the Appendix, under the title “*Sources of Experience*.”

simply on the testimony of others, or on their authority, it might appear that he was dealing merely in *hearsay* — which has been shewn not to be evidence. But this is not the proper way to view the subject ; and this is not what I here mean by authority.

From authority, in my apprehension, we are fully entitled to speak, when, after having satisfied ourselves of the truth and propriety of the testimony of those from whom the authority is derived, we adopt their representations as satisfactory evidence of the truth, and make their opinions our own. The error as to allowing undue preference to experience, rests therefore with us ; for it is because we advance statements that we have *not* incorporated with our own knowledge, and advance them *as* the opinions or experience of others, that we are desired to confine ourselves to what we know. In the sequel some illustrations of this will be found* ; in the mean time, it will

* One in particular may be quoted here. In the case of Butterfield (given hereafter), a medical man was asked, as to a particular circumstance, on which his experience seems to have been doubted, “ Was that the opinion of Dr. Mead ? ” and satisfied the court very properly, by answering, “ It is my opinion.”

be necessary to examine a little farther into the rationale of the matter.

Medical men are more frequently called into court to give opinions and statements as to the laws of nature, or the effects of certain agents upon the animal economy, than to relate events. In Great Britain, all medical practitioners are alike liable to be called upon for the discharge of this duty; and the evidence of all is receivable. Often, however, does it happen that the evidence of several is required, and that the degree of credibility allotted to each may vary, from different causes. For the most part, it has been customary to estimate that witness first, who vaunts highest of his experience. Frequently also a witness is examined as to *the extent* of this qualification, the meaning of the word being restricted in all cases to what he has himself seen or accomplished. Thus it must sometimes happen, that the fortuitous occurrence of being eye-witness to the operations that form the subject-matter of our investigations, is allowed to supersede the knowledge that study alone can impart, and the exercise of a natural talent for digesting and assimilating the acquisitions of others. I readily admit that, *cæteris paribus*,

or even *prope paribus*, the man of experience should be preferred to him who is without it ; but when one is found who possesses no qualification but that of *having seen*, I should doubt much his claim to paramount confidence. Dr. Campbell observes, that “ what has been rightly perceived may be misremembered ; what is rightly remembered may, through incapacity, or through ill intention, be misreported ; and what is rightly reported, may be misunderstood. In any of these four ways, therefore, either by defect of memory, of elocution, or of veracity in the relater, or by misapprehension in the hearer, there is a chance that the truth received by the information of the senses, may be misrepresented or mistaken* ;” and your man of mere experience, is a man of information through the senses only†. It is very possible, therefore, that he may be inferior as to knowledge and intelligence, to the

* And again — “ testimony holds directly of memory and sense. Whatever is duly attested, must be remembered by the witness ; whatever is duly remembered, must once have been perceived. But nothing similar takes place with regard to experience, nor can testimony, with any appearance of meaning, be said to hold of it.” — *Dissertation*, Part I. sect. 1.

† See Appendix, Part I. “ *Sources of Experience.*”

diligent student; for an accidental observer may be unqualified to make use of his opportunities, while the other may acquire much information, without going beyond the labours of others. The man of experience, moreover, has to labour as much single-handed as all the rest put together, ere he can equal them in pretensions; while the student again may have opportunities of experience to a minor extent, but will make a vastly better use of a few, than the uninformed can of many.

On this point, among the very scarce opinions that I can find recorded, there would at first sight appear to be a difference. This, however, I look upon to be more in appearance than in reality, and I think it will be possible, by a precise application of terms, to reconcile the seeming contradiction. Thus, one author says, "The medical practitioner should not enter into any arguments or apologies for his opinions; neither should he attempt to give additional weight to them, by adducing those of any writer on the subject, as the propriety of the application of these to the case in question will not be recognised by the court. He is supposed, by the legal authorities, to be sufficiently acquainted with the known phy-

siological laws which relate to the subject under consideration, and it is his own interpretation of what he has *observed*, that is here required*." This injunction bears upon the very face of it a supposition that the interpretation, however truly it may be the witness's own, is not the *unauthorised* suggestion of his own mind, for he is to interpret by the known physiological laws, and these laws he must obtain his knowledge of by the aid of others: so that, in fact, he is to speak from what has been described as 'derived experience†.' Medical opinions must have their original foundation in authority; and if we were to confine the amount of a man's real knowledge to that obtained from 'personal experience,' or, in another phrase, observation, we should commit the greatest of all absurdities‡.

Personal experience, for that is certainly what the latter word, in its ordinary use, must be restricted to, is in great measure accidental: it must fall to the share of different individuals, in different forms and degrees; and I believe that no small portion

* Hutchinson, Dissertation on Infanticide.

† Page 116.

‡ See "*Sources of Experience*," *infra*.

of that odious discrepancy which has prevailed among medical witnesses, whereby the lustre of medicine itself has been so much tarnished, is chargeable to the prevalent affectation of being men of experience rather than men of learning, to the over-anxious desire of being (and perhaps sometimes the dishonest wish of being thought to be) extensively employed rather than solidly instructed and properly qualified.

Let me not be understood to despise experience — still less would I advocate a blind reliance on authority. I trust that the more precise ideas I have attempted to attach to the terms used in this chapter, will set aside any such imputation. I am fully aware of the mischief that has accrued to medicine from the overbearing influence of great names, and have long ago recorded sentiments on that point, which I have not yet been led to change*. Unless, however, a medical man enlarges his experience by a knowledge of, and deference

* In referring to the London Medical Repository, vol. xii. page 106, (for August, 1819,) I claim a production which, had my original views been fulfilled, I had long since avowed; and I hesitate not to refer the reader to some of the sources from which I derived these sentiments. See Appendix, "*Influence of great Names on Medicine.*"

to that of many others, his own personal stock is not likely to be worth much. All men are inclined to place great reliance in their experience; and those who have had least, are sometimes unusually vain of their share. Young men have often surprised me by the familiarity with which they have used the word, when evidently mistaken as to the nature of the thing implied; and I must confess, that my suspicions are apt to be excited, when I meet with a specimen of this purely experienced character, armed *cap-à-pié* with his experience, and eager to blind his less fortunate neighbours with its dazzling refulgence.

For *derived* experience, however, the possessor may be entitled to credit. He will acquire it, in proportion to the diligence with which he goes in pursuit of it; and it approaches so near to what the word *authority* should, in this place, imply, that it might be substituted for it—the strictures here offered being almost exclusively directed against the overweening respect paid to the other sort. It has been rightly observed, in answer to the doctrine laid down in the last quotation, that medical testimony is little else than a reference to authority, and that to put this out of sight, would lead to a compromise of the

rights and dignity of the profession, as well as the force of the witness's own evidence*; and surely it is but slender good manners, and a very ordinary exercise of common sense, not to substitute our own patch of authority in place of the ample store accumulated by the sages of the profession. Some there may be, who, gifted with the rare endowment of a master-genius, may add a goodly portion to the fabric at which thousands have, during many ages, been labouring; but some of these have made but little of it, when they have been brought upon the arena to fight with the rude weapon of *experience*.

It is matter of surprise that lawyers, of all men, should object to authority as the ground of opinions, when a deference amounting, in appearance, to servility, seems to lord it over their own professional tenets. On a very important trial, this was adroitly urged by a medical witness. Being called upon to explain the phenomena of death by drowning, he was proceeding to support his statements by those of Paré, Zacchias, and others, when he was desired to confine himself to his own observations and experience.

* Edin. Med. and Surg. Journal, vol. xix.

He retorted, that he saw no reason why he should not quote the fathers of his profession in the matter, as well as the gentlemen of the long robe, who quoted Coke upon Littleton in theirs. He also remarked, and with great propriety, that it must be reading, as well as a man's own experience, that will make any one a physician*.

* See the evidence of Dr. Crell, in the case of *Spencer Cowper*, Appendix, Part II.

CHAPTER IX.

OF SOME PARTICULARS IN THE WAY OF PREPARATION.

I HAVE already stated that the medical witness is liable to be hurried into court, without any previous notice of the subject on which his evidence may be required*. It is in vain to reply, that the same thing happens hourly with regard to our other duties; for the knowledge without which we could not exist, in order to discharge them in any degree, will not avail us, perhaps, in the Forum. A practitioner may often conceal his ignorance, or gain time to refresh his memory, under ordinary circumstances, either of which it would be impossible to do on occasions like those in question.

For the most part, however, some previous idea of the subject of inquiry will be readily obtained; and probably there may

* Page 62.

also be sufficient time for collecting our scattered ideas, or furnishing ourselves with accurate information ; to do which is our indispensable duty, whenever opportunity is afforded. No man is obliged to declare himself bankrupt in knowledge, if there be an opening for the retrieval of his affairs ; and I think the common story of the carpenter furnishes an apt illustration of what all men should attend to in similar circumstances. This person happened to be witness to a serious affray, in consequence of which he was called upon (as he had foreseen) to give evidence. Being asked, how far he was from the spot at the time of the occurrence, he gave the distance, with minute exactness, even to the fractional part of an inch ; being then interrogated as to the manner in which he had qualified himself to give so singularly precise an answer, he stated, that, thinking some fool might ask him, he had measured the ground. Putting the impertinence of the reply out of view, we shall do well, in other respects, to follow this man's example, and measure the distance at which we may happen to stand from the matter it may become our duty to explain — not for the purpose of relating, but in order to diminish or annihilate it.

This, however, has not always been done; and I doubt whether there are not on record very evident examples of witnesses maintaining ignorance, and going forward in a state of *premeditated incapacity* to clear up a dubious point. In some of these suspected cases, whatever the motive may have been, it was manifestly in the power of the party to have acquired fuller knowledge, and to have approached nearer the utterance of the whole truth; in other instances, perhaps, the ignorance may have been equally premeditated, although the means of avoiding it may not have been so much at command. In some of these latter cases, men have indulged in round assertions as to the *inutility* of making certain investigations, when the real cause of their omission must have been their own inability, or, at the best, disinclination to perform them.

There is a very important consideration for the medical jurist, in the view of being called upon to elucidate a doubtful or difficult question, which has not so much escaped attention on the part of the profession, as it has been misunderstood, or mismanaged. The subject, on which we may be required to afford the lights of science, may be susceptible of particular elucidation by experi-

mental inquiry — instituted especially for the occasion at issue ; and it becomes us to ascertain how far, or under what circumstances, we are to pursue such investigations. As my object is not to discuss these matters in detail, but to suggest food for the consideration of those upon whom the practical duties of the Forum, as connected with the medical sciences, may from time to time devolve, I shall restrict my observations to a very general view upon two sorts of inquiry, viz. those of chemical, and those of anatomical import.

With regard to chemical investigations, it must be observed, that by far the most frequent calls for exercise in that line will arise from cases of alleged death by poisoning ; and, suffice it here to say, by the administration of deadly substances belonging to the *mineral* kingdom. True, we have of late been introduced to a new range of discoveries, whereby the process of verification in regard to some of the most important articles of *vegetable* toxicology, has been closely and conveniently assimilated to that established in the former reign ; but it is quite unnecessary to introduce exemplifications here. The rise, progress, and advance towards perfection of the department in

question, is one of the most curious and satisfactory topics that the mind of the physiologist can contemplate; and silent as may have been the labours, and unpretending the discoveries, of those who have waded through difficulties and disappointments that are perhaps little known, and less appreciated, the real advantage which society will reap, may not be ultimately eclipsed even by the safety afforded to the miner or to the mariner, through discoveries certainly more brilliant and inviting than such as have yet preceded or accompanied those of the toxicologist.

But, before proceeding more particularly to the application of the subject to experiments of this precise nature, I think it my duty to advert to another, (perhaps, of greater magnitude,) pointed out by a very important case, not of very frequent occurrence, but of a nature to suggest very prudent measures, should such another take place — I mean where experiments upon a grand and expensive scale are to be undertaken, involving questions as to the defrayment of costs, and the requital of time and labour. It is apparently established by decision of the Court of Common Pleas, that the cost of experiments

cannot be allowed to the successful party, and that scientific men are to be requited for loss of time as physicians*. Having given this hint, I proceed with that consideration of the subject which more intimately concerns the *individual* professor of medical science.

Numerous have been the occasions, and numerous they will continue to be, where the isolated practitioner must labour in the application of those auxiliary sciences, on which the healing art is built, to the purposes of judiciary inquest. It is our duty to apply ourselves, without respect to convenience, or to considerations of economy, when there is question of human life, and of public justice. Therefore, (to recur for elucidation to the case of poison,) when a prac-

* By scientific is here meant professional men in general. Physicians are paid at the rate of two guineas *per diem*, the same as barristers; "the most eminent receiving the same as him who had got his diploma but the day before." The court discouraged the distinction as to eminence, upon the ground that the time of a poor man might be equally valuable to him, and perhaps more so, from the support of his family being dependent on it. The late Mr. Rennie, the engineer, who had been summoned in the case, was considered merely as any other scientific claimant, valuable as his time must have been. See case of *Severn v. Olive*.

tical investigation is requisite, we must satisfy the court, not only that a poison has been administered, and that it has caused death, but as to the particular substance that has been used, and also in what manner the fatal event was brought about.

So lax have been the opinions of medical men, and so variable their statements, on this very grave and interesting point, that the tribunals will no longer receive our mere positive statements, *even on oath*, that certain poisons have been detected in any given case, until after a minute and elaborate process, first of investigation, and then of testimony, ending in a certain arbitrary conclusion, which it is possible may, after all, be at variance with science and truth! In short, we are not supposed to know some of these substances, except in one specific form. This is one of the evils which our inattention to forensic applications of science has introduced; and one instance where the considerate practice of the courts has been interposed to save the interests of justice from injury, on the part of scientific evidence; but it is not the only one, as those who are in any degree conversant with the course of medical testimony, especially of late years, must be aware. It is a slur upon

us, that nothing can remove but a general and accurate application to the study, after a tried course of better acquaintance with it.

The investigation must be made fully and most elaborately; but having scrupulously been so, I cannot see why a medical witness should not be allowed to swear that he found *arsenic*, for instance, to be an ingredient in certain bodies, although he did not go the length of producing the metallic form of that mineral, as the final result of his experiments. If there be doubts as to his competency, such ground of objection to receive his conclusion as evidence, should be distinct from any that may be laid against the import of the experiments themselves; but since that notable trial, of which too much cannot be said when writing on forensic toxicology, (and of which I purpose to give, if possible, the whole of the medical evidence*,) the capacity of the experimenter, and the validity of the experiments, have been unfairly confounded together†. This is a point upon

* The case of *Donnall*, Appendix, Part II.

† As I cannot be too cautious in my statements on so important a point as the *experimentum crucis*, with regard to

which a whole volume might be written with advantage; but it has received all the notice that can fall to its share in this place.

With regard to *vegetable* poisons, I have alluded to the great advance we have, almost at once, been enabled to make towards their detection by chemical process. For this we are indebted to the medical jurists of another country, who have shewn us an example in public medicine that it will not be easy to

the verification of *arsenic*, and should never forgive myself were I to unhinge the mind of a solitary practitioner, or to lead him into perplexity, I beg to say that I adhere to what I have already laid down as the safe rule of conduct, according to the existing practice of the courts, in verifying the presence of this particular poison — about which alone the great difficulty of the day seems to exist: and as it is possible that this passage may meet the eye when the rule cannot be referred to, I make no apology for quoting it. “The great, the safe, and indeed the inevitable principle to be kept in the mind of the practitioner, with regard to the detection of metallic poisons, and of *arsenic* in particular, is this — any one test is but corroborative of the rest; therefore a plurality should be employed, from *the concurrent results of all which* only will his opinion be warrantable and receivable as evidence: and that the *metallization*, where the quantity of the poison is sufficient to enable him to go that length, *must never be omitted*; otherwise his conclusions will be subject to animadversion, at least, if not to rejection.” — *Principles*, &c. page 104.

excel. Were the remarkable case that has, for more than forty years, divided the public mind, as to the validity of scientific testimony, to be tried at the next assizes, I have not a shadow of doubt that, the basis being the same, the experiments that would now be made, would lead to the same conclusions, and that the verdict would not be different. The opinions of no great man would be laid in the balance, unless he could swear to particular facts as their foundation*.

But we shall have frequent occasion to make investigations of other kinds, among which I shall notice only the examination of bodies, in order to verify the cause of death. For pathological purposes, it may not be requisite to observe that minuteness and accuracy which are indispensable for the satisfaction of public justice. We must here enable ourselves, not only to state what was the cause of death, but also to refuse or admit the possibility of any other circumstance that may be suggested†. The man-

* See the case of *Donellan*, Appendix, Parts I. and II.

† Such suggestions are of daily practical occurrence, on the part of magistrates, counsel, &c.; and the reader, in the course of the Appendix, will no doubt find examples enough.

ner of performing this duty, belongs to the details of Forensic Medicine ; but I take the liberty to say that, while every medical practitioner ought to be anatomist enough to *direct*, if not to *perform* a proper examination, the official *sectio cadaveris* can be learnt only from the medical jurist.

In both courses of inquiry, I would advise that the operator be sufficiently adroit, that is, practically conversant with the species of manipulation he is about to practise ; but, if dubious of his own dexterity, he should seek the aid of a proper co-adjutor. Delays, even here, need not be dangerous ; and the question of *convenience* must not, for a moment, be entertained. Were this a suitable place for exemplification, I could shew the mischief of hurry and want of caution, in colours sufficiently strong ; but, before we reach the last page, something of that nature will probably present itself.

There are strong reasons for a plurality of practitioners being present *together* on such occasions — one or two of which I must adduce. It is quite impossible, in such circumstances, to perform certain indispensable parts of the inquiry with one pair of hands ; and to prepare a satisfactory

body of testimony for future consideration, at a time when the attention is so deeply occupied with active operations of another nature, nearly so. It is plain, that the evidence must afterwards greatly depend upon notes; and how they can be prepared by him who is occupied in the manual operations, demands no inquiry. The parties should agree to divide the labour; and one should reduce to writing the facts and observations elicited by the other, or by both. The originality of such notes* cannot be impeached hereafter, if but ordinary care be taken in their primary preparation, as well as conservation for future use.

Moreover, it has been very properly urged that a conference and comparison of opinions is of the utmost importance among medical witnesses. By this no one will for a moment suppose that there is any question of collusion. We assemble, not for the purpose of agreeing in *a story*—not to make or constitute a matter of science, but to ascertain what such matter already is. Upon this occasion, I am glad to have it in my power to speak after the authority of one from whom it has given me pain to dissent

* See page 23.

on another point. "Intelligent and honest men," says Dr. Percival*, "fully acquainted with their respective means of information, are much less likely to differ, than when no communication has previously taken place;" and he goes on to illustrate the opinion, by a very interesting example†. I have already said all that appears admissible on the subject of *party feeling*; and must leave to those concerned the management of such obstacles to the accomplishment of the measure in question, arising out of the particular situation of individuals. It would be a comparatively easy matter to distinguish between the interests of science and those of individuals, were sufficient pains taken to inculcate the necessity of doing so, when laying the foundations of professional education. A few, by the happy circumstances of their private position, may have their minds properly directed from the beginning, and powerfully imbued with right propensities; but the bickerings and animosities of life cannot be supposed to be altogether excluded from among a class of men, the general body of whom is so little instructed in the origin of their professional or *family*

* Medical Ethics.

† See Appendix.

character, as it is our actual misfortune to be*.

If men can be brought together in the way desired—and in the vast majority of instances, of course, they can be—the immediate advantage must be that now quoted; for whenever two or more medical witnesses differ materially on a point of any importance, the real cause must be the possession of better information on the part of some than of the rest†. This is the simple secret. It explains all that has happened; and will explain it satisfactorily, if we keep in mind that men are not often disposed to believe themselves deficient, and cannot always be expected to acknowledge it. But if exposure be avoided, and necessity for the acknowledgment obviated, the difference itself may disappear. Let it once loose, and the case is hopeless; but manage it privately,

* The reader may not have forgotten the observations by which this Analysis was introduced.

† I had recorded this observation long ere the following gleanings fell into my hands. “If witnesses are equal in number and credit, their discernment must arise from their skill, and will appear from the reasons and accounts they give of their knowledge; for if one gives more plain and evident marks and signs of his knowledge than the other, he is rather to find credit—” *Gilbert*.

and the consequences will be of the happiest nature. Common urbanity would urge one to predict the best effects from such observances on the part of the members of that profession in which I am but too proud, when I look at their general claims to estimation, to be ranked; and experience compels me to record, that on all occasions I have seen nothing but the most satisfactory results. To some it may appear that I have, in the course of this volume, indulged a disposition to mistrust and undervalue my brethren. Far from it — such a display would ill become me. Among them, *of all denominations*, do I rank my best and closest friends; collect vely do I respect them, and would go every length to serve them: and I fully recognise it as a claim to such share of my sympathies as alone it is in my power to bestow, that the claimant be of our order. But when it falls to one's lot to animadvert upon public duties, we must not only distinguish between things and persons, but perhaps incur the risk of misapprehension as to the view we take of the general community, and the sentiments we may entertain of the individuals forming it, as far as they are known to us. If to this I have exposed myself, I have but incurred the common

odium that falls to the share of those who pretend, or seem to pretend, to know a little more than some of their neighbours.

Whether, as a *medical witness*, with all the advantage that attention to the matter may be supposed to bestow, I should be in the least degree better off than so many who have gone before me, I cannot take upon me to say; but, *generally* speaking, I think it may not be amiss to confess, that since the subject has passed through my mind in the present form, I do not feel quite so much apprehension as I previously shared, in common with my brethren at large, as to this redoubted ordeal; and if from any particular caution there is greater confidence to be derived than from another, it is, in my estimation, the last-mentioned—as to conferences with one another. I should leave the subject in a glaring state of imperfection, however, did I not subjoin the most important of all—inadequately as it may be in my power to convey it in a manner suitable to its magnitude, within such limited bounds. For this the reader will be pleased to proceed to the next chapter.

CHAPTER X.

THE SUBJECT OF PREPARATION CONCLUDED—REGARDING THE STUDY OF FORENSIC MEDICINE.

IF I had nothing additional to say upon this theme, or nothing to place in a new point of view, it were too much, perhaps, to expect that so inviting an opportunity, even of saying something over again, should be willingly abandoned by one who has so closely allied himself with its interests. I fear that some of what I may now be led to advance, will not give the greatest satisfaction; and perhaps it may be as well to acknowledge at once that, on the present occasion, I do not write *to please*. Nor can I fairly pretend that my object is even *to instruct*; if, then, it be asked what the object is, my answer must be—to help the reader *to instruct himself*.

And this, at the present juncture, is nearly all that any of us can do—for we have no preceptors (at least in England) to repair to.

Before entering, however, upon the direct discussion of this point, it will be more in order to say something about the importance and urgency, or, rather, the indispensable necessity of paying unprecedented attention to the application of medical knowledge to public purposes, more especially to the administration of justice.

This is a science of long standing — one even of great antiquity, if we compare it with some that are now objects of universal interest, and the subjects of most assiduous cultivation: nor is it one of which the utility or the applicability has disappeared. This circumstance alone should form an acknowledged claim to attention on the part of the philosophic and liberal-minded. But it is every day made more manifest to the world at large, as well as to the medical profession, that its usefulness is extending, and its practical application becoming more direct and minute. These remarks are restricted to its position in this country; for, if we look abroad, we shall find that it has, for a long period, formed a regular branch of professional study in many universities; and that its objects are considered inferior to few, of national importance, in the estimation of several powerful and enlightened governments. The day

must come when all eyes will be open to the fact of inconceivable mischief being ascribable to no other cause than overlooking the advantages that should be secured to the public from the lights of the medical sciences, which teem with splendid materials, wanting but skilful application to cast them abroad.

But this amalgamates with another plea for paying the attention in question—the importance of the theme itself. It is important to all*, and is, therefore, the business of all; but, being so, perhaps, becomes the affair of no one. It is overlooked by him, who, of all others, ought to mind it—the medical practitioner. I shall look at its importance to him only; and must affirm that he

* The venerable Dr. Rush, many years ago addressing a medical assembly on the importance of this study, elegantly epitomised its objects in the following words. “To animate you to apply to the study, recollect the extent of the services you will thereby be enabled to render to individuals and to the public. Fraud and violence may be detected and punished; unmerited infamy and death may be prevented; the widow and the orphan may be saved from ruin; virgin purity and innocence may be vindicated; conjugal harmony and happiness may be restored; unjust and oppressive demands upon the services of your fellow-citizens may be obviated; and the sources of public misery may be removed by your testimony in courts of justice.”

cannot do without it. If to this it be answered, that he *has* done without it, I will either impugn the assertion, or ask—what has he done? Let all that can be gathered together as forming the history of intercourse between law and medicine be brought to refute me either way—I will abide the result*.

But as my observations in this place must necessarily be brief—no more than touches—I pass to another plea, suggested by a question naturally arising out of the former—Will an acquaintance with this particular arrangement and application of medical knowledge enable us to do better? Were I merely to answer that if it will not make us worse, and give but a chance of improvement, it is our duty to try, I should say much in its favour: but the question admits the most unqualified reply in the affirmative: and as I wish that the few words I have it in my power to employ, should carry with them all possible conviction, I shall come to explicit points at once. I answer then—that an acquaintance with

* A specimen of this history, the first that has been collected, forms the Second Part of the Appendix of this volume. The candid mind will, I think, be at some loss to admit that we have done *well* without it.

Toxicology would enable us to talk sense, when called upon to describe the nature, properties, action, detection, and verification of poisons; about which two witnesses* have seldom contrived to exhibit less than two opinions as to any one case; and of which there can be but one thing to be said in the shape of truth. If we attended to those applications of *Physiology* which lead to the verification of other causes of death, we should be able to give *satisfaction*, when required to depart from the common relations of our science, and its more ordinary connexions, in regard to derangements of the healthy structure, for the purpose of explaining such as are unusual. We should then speak neither upon supposition, nor from analogy, nor by inference; but be able to utter positive truths, to refer to similar facts, and to satisfy the juridical mind by a juridical answer to any specific interrogatory. "I should suppose," is a form of reply but too frequent in the annals of medical evidence, whereas, in ninety-nine instances out of a hundred, we ought to be able to say *such is the fact*. It is because medical men have been seldom able to answer in this way, that

* Witnesses, *pro* and *con*, of course.

the place of testimony has become clouded with those horrors we shrink from encountering, and which due attention would dispel, rendering it an admirable arena, on which, in maintaining the cause of our profession before the public, we should reap personal benefit, instead of misfortune. To appear as a medical witness, might then be as desirable as it is now deprecated, and be sought after as a privilege instead of being shunned as a calamity. It will be purely our own fault if it does not become so.

And here I may suppose the question put, how is the fault to be apportioned, if the means of acquiring the knowledge in question be withheld?—which leads to a view of the actual state of the science in Great Britain, and the way in which the profession can at present remedy the evil.

I know of no department of medical education more susceptible of due arrangement for the purpose of separate teaching, than that branch of PUBLIC MEDICINE which relates to the *Forum*, and constitutes the most intimate portion of our POLITICAL business. It is, in my matured apprehension, on a footing, in this respect, with all the other great departments, which are of a practical character. It is equally so with

the *Practice* both of *Medicine* and *Surgery* — and it is, perhaps, the more exquisitely distinguished in this way, as it is an extended application of these themselves, in conjunction with well-known branches that are subservient to *their* formation. At present I must restrict myself to the assertion; elsewhere I fear not that I should be able to offer the most convincing proofs.

If, therefore, it should be insinuated that it may be learnt by inference from, or taught piece-meal in conjunction with the other branches of professional study, I might retort, with perfect truth, that the same will hold good as to some of those which are esteemed, and justly so, of the last importance. But the insinuation is entitled to more consideration, from the real existence of something like a practice of that nature*.

At present the only school of *Legal Medicine* is the University of Edinburgh; and if all that require it could reap the benefit of the lessons given there, one might be satisfied. As long, however, as London is a crowded resort for the purposes of medical education, it ought to possess the

* See the note on *Teaching Public Medicine*, in the Appendix.

means, at least, of affording a complete one. Perhaps in this alone is it deficient; and of all the medical schools of Europe, it alone is defective. Offers to teach have not been wanting; but one lecturer after another will in vain appear on the horizon, ready to devote his time and exertions and means to the important object, until the strong arm of authority shall drive men to their duty: and this, if I mistake not, will ere long be accomplished. That the present arbitrators of the course required for "passing," should prescribe it as an essential part of preparation, is not expected. Before any set of men can certify that a person is qualified to exercise a particular branch of knowledge, they must be satisfied that he possesses a competent share of it; and before they can judge of that point, they must perhaps have a little themselves — ere that again can come into their possession, it must be sought for and acquired — and how, with regard to *public medicine*, is all this to be managed? Must the *corps diplomatiques* themselves repair to school? The impulse will, in all probability, be derived from another quarter; and so cruel a necessity may, perhaps, be obviated.

To teach this science is not a light matter. If we look at the full extent of its range,

we shall see many objects of great magnitude, that do not fall within the ordinary scope of medical observation; and if we confine the view to that branch which more immediately respects the matter of testimony, and the inquiries of the Forum, it will still shew a front of dimensions sufficient to contain in its depth profound and weighty matters for investigation. It ought to be done upon an experimental plan; for the senses in general must, in numerous instances, be called to the aid of the student; otherwise he will incur but the greater risk of error in future reliance upon the memory, which has been addressed through the deceitful and imperfect medium of hearing only.

But I must hasten to the only means in the power of the profession for the effectuation of the purpose required, viz. books. With general treatises we are now pretty well supplied; and it is to the last degree imprudent, on the part of the medical profession, to be unprovided with them. In making this remark, I speak after the unanimous voice of those who have had occasion to pronounce upon the exigencies of the study, and the merits of these performances—all the critics, to wit, both lay and professional—and

am indifferent as to the light in which my own opinion, or views, or wishes, as the author of one of them, may be received. I am now addressing those concerned in another capacity, and will set a thing before them, of which they may or may not be aware. These books are in the hands of the lawyers, who carry them to the circuits; they consult them before entering on the causes to which they bear reference; and from them they frame, in some measure, their course of examining medical witnesses. These books shew them what the duty of the medical jurist is, and suggest to them questions appropriate for ascertaining how, in any particular case, he may have performed it; they disclose the deficiencies of the profession, and of necessity lay open our weak points, otherwise they could not very efficaciously attempt to strengthen them: in fine, they are addressed as expressly to the jurisconsult as to the medical practitioner.

If so, what a simple course have we, on our side, to pursue, in order to be able to meet all this with due advantage! We have but to study the game according to the same rules, and we shall play it upon equal terms. But as the simile may be considered beneath the importance of the occasion, let me

remark, in plainer language, that if we repair to the same sources, we shall find the antidote planted by the side of the bane ; and it is gross stupidity not to anticipate all that is to be anticipated in the way of *special* preparation.

I will call the attention of the reader to another circumstance, well worthy of note any where, and particularly appropriate here—one which may tend to do justice to the claims of this neglected science, as it must shew it to be any thing but chimerical. While the opinions of the medical profession at large have long been proverbial for diversity ; while those upon medico - legal questions have been notoriously unsettled, and the statements of witnesses have been conspicuous for little else than vagueness, error, and discrepancy, among those who have taken the trouble to investigate this subject, (and they are not a few*,) there is more uniformity of opinion, and more coincidence as to conclusions, than can be found among almost any number of writers, how-

* I am persuaded that a thousand volumes, at least, might be collected *without difficulty*, in this department. I speak from knowledge of their existence ; and I think that, with some pains, many more might be obtained.

ever small, upon other medical topics. With regard to the writers in the English language, who are both the latest and the most proper for illustration, it is perfectly fair and reasonable, perhaps I may go farther and say it is but true, to infer that they have been fully inclined to scrutinise most rigidly the statements of one another, and nothing loth to dissent upon good reason; yet, although each may have taken his separate road, they have all met at the same goal. In fact, upon any material point there is hardly a shadow of difference.

But I shall pursue the subject no further. There is yet before the reader much that I hesitate not (with reference to the second portion of what follows) to call valuable matter, for his consideration, and to which this Analysis may be considered but an imperfect introduction. He will meet, I hope, with some useful lessons, from which I shall be disappointed if he do not derive benefit.

A P P E N D I X,

PART I.

CONSISTING OF

ADDITIONAL NOTES AND ELUCIDATIONS.

APPENDIX,

PART I.

Medical Ethics.—p. 3.

THE code by which they are governed whose common occupation is philosophy, might be thought of sufficient interest to secure at least a record—but it is matter of question whether it has in reality an existence!

With regard to the London schools, they possess numerous excellencies and great advantages; but these are deteriorated by vast defects and formidable abuses. The very essence of the thing is hostile to its true welfare, and perhaps there are more inadequate returns to society from this greatest collection of facilities, than from any other quarter—whether we estimate the number positively or comparatively.

Several reasons for this at once present themselves.

In the first place,—There is a general attempt, on the part of teachers, to execute *too much*. By this, it is not meant that they teach too much of any one thing, but that they attempt too many branches. For the ordinary practical purposes of the physician, a great diversity of knowledge is indispensable. Every medical practitioner ought to be an anatomist, a chemist, and a nosologist; and acquainted with the ordinary arrangements of medical knowledge which are designated, Theory and Practice: but does it follow that he can be equally capable of *teaching all these*? True, he may tell all he knows, but does that constitute a Professor of Science?

Secondly,—There is not time enough to teach. *A course of lectures*, has no definite meaning: it is a matter so arranged as to suit the circumstances of the teacher or his pupils—constructed upon no acknowledged basis. The thing is too multifarious for any such influence to prevail over it. One man must make his course subservient to the convenience of attending that of another, and so on. If he do not, he will get no pupils.

Thirdly,—There are too many *professors**. Look for example at the men-midwives, to whom a course of lectures, or a supposed squad of pupils, is more essential now-a-days than a pair of forceps. They are all *Doctores* too, with very few exceptions; and must have become so, in order to entitle themselves to be called *teachers*, it not being requisite for practice—the College of Physicians having ceased to take cognizance of Obstetrics†.

In some other branches, it were (in my opinion) desirable that the candidates for public favour were fewer. I allude, *generaliter*, to those in which the only thing required from the *professor* is TALK. It is not so easy to *profess* anatomy, surgery, or chemistry, with one or two other branches; and, accordingly, I believe there is little scope for animadversion as to these.

One of the greatest reproaches to all the divisions of the London school, is the neglect of Clinical Instruction.

In the fourth place,—The thing altogether is little more than a *finish*. Probably the better educated part of the profession are indebted, for their solid acquirements, to very different sources, although it is here that all the debt is acknowledged, and all the *éclat* acquired. It is here that the qualifications are to be had, and the terrors as to obtaining them are to be experienced. Examinations, diplomas, &c. &c. all contribute to eclipse the great object, and to endow the intermediate and very subordinate one of “passing the hall,” with paramount interest. So that in fact a metropolitan course of education is but “a cramming,” and the *professor* of real importance is the grinder‡.

Finally,—Pupils will not go where the lecturer does not stick to the practical, nor take the trouble to attend those parts of a course, upon which they run no risk of examination. It is a very *passing* affair indeed—as few months as the statutes will recognise; and as few teachers; and as few of their lectures, as will

* I use this term in the sense of the young Scotch medical officer, who, on his arrival at a certain station in the Peninsula, being asked by the inspector (in friendly conversation) where he had been educated, and what he had studied, summed up a very circumstantial account, by saying—“and I profess Greek.”

† There is a curious note upon this, in Paris and Fonblanque, vol. i. p. 43.

‡ It may be asked where is the school in which this personage is not *in the death*? However that may be, I will answer for one, to the best of my knowledge, (never having yet set bodily eyes on more of a grinder than his name,) that the prior part of the chase has been somewhat according to rule. In London they now come forward manfully with their pretensions—and these are neither few nor small. I have before me, on the cover of a regular medical journal, the bill of a “Professor of Medicine,” not styling himself M. D., who undertakes to repair the classics generally, for the small charge of Twenty Guineas! These are, indeed, the piping times of peace.

accomplish their fugitive purpose. Of course these remarks are not universally applicable.

No wonder that there is no time for extraneous matter, which *Medical Ethics* may perhaps be considered.

Let us look at the other great school.

Through the wide and more deliberate range of the Edinburgh system, (in attending which I became the pupil of every teacher of repute, without, as well as within the pale of the university,) all that could be gathered, relative to the subject, amounted to incidental allusions, or passing inferences, here and there, which rarely escaped the lecturer in such a way as to demand distinguished attention, or to carry any great weight. Such was the case with courses of prelections, worthy in every other respect of the bowers of science,—courses delivered daily for six months,—each, it may be said, confined to its own proper business, and the more advantageously so, as being but acknowledged parts of a whole, to be filled up in their proper separate places. Surely it were easy to make it some one's business to supply the defect in question — and in that quarter, the subject would receive encouraging attention.

Dr. John Gregory was in the habit of employing the few first days of the session (during which it is not convenient to proceed to the details of an important course, as the students are not fully assembled,) in the delivery of *Lectures on the duties and qualifications of a Physician*, forming a gem in our literature, that ought to be as dear in the estimation of those to whose interests they relate, as the sister "Legacy," has been to their mothers, wives, and sisters. The example of this illustrious teacher has not, as far I know, been followed. His eminent son chose for his *passe-tems*, the *History of Medicine*. Curious, however, and instructive as these lectures are, I think the advantage, and am certain that the interest and entertainment would have been greater, had he taken up his father's preliminary theme*.

* Thus far had I written, under impressions of respect, and feelings of attachment, for the establishment to which I owe the nurture of my professional infancy, when, with no small grief, and some astonishment, it fell to my lot to peruse the project for altering the course of education in the medical school of Edinburgh. Rigidly adhering to the proper theme of this volume, the advancement of *Legal Medicine*, I shall venture on no expression of opinion as to the merits of the project, beyond what respects that department. Of seven professors, (who at present constitute the medical faculty,) two have filled the medico-legal chair, and a third distinguished himself, in no small degree, by his praiseworthy exertions to obtain its establishment — yet have they decreed, that henceforth physicians shall study *midwifery*, and have omitted that magnificent and far more important branch. Report says, that to some of their new regulations they have been compelled by their patrons, the haberdashers and hosiers, druggists and grocers, of the city of Athens!

Dread of the Witness-Box.—p. 5.

The surgeon who related to me the very instructive case alluded to in the *Principles**, (of a man who was tried for the murder of his wife, without the shadow of a foundation for the charge,) declared that he never was in such a fright in his life, as when summoned on that occasion. He had heard of a book on these matters, written by *one Farr*, but he could not get it, situated as he was. A gentleman in the profession, of a different stamp, mentioned to me, with a sort of complacency, that he had experienced the good fortune of escaping all occasions of giving evidence. I cannot look upon such a matter as good fortune, especially if it leads to a habit of indifference as to a state of preparation. In the instance in question, I believe the fact to be otherwise; but as long as medical men feel that giving evidence is a fearful undertaking, they will fail to do justice to themselves and their profession, when compelled to stand forward as witnesses. Ignorance is the real parent of this dread—and the effect of a few displays on the part of competent witnesses would go a long way towards removing it.

Discrepancies among Medical Witnesses.—p. 10.

These have been a disgrace to the profession. They have rendered medicine contemptible, and medical men odious in the eye of the world. I am persuaded, however, that they are partly to be accounted for from the general prevalence of loose notions among the members of our profession, as to the nature of evidence, and from lawyers laying the reins loosely on their necks, under the mistaken notion of their being competent to discharge the duty of witnesses, as well as of practitioners of the healing art†. Had a tight hand been kept upon them, as carefully as upon other witnesses, they would have gone less astray. Perhaps the gentlemen of the other profession have put up with much ineptitude in our statements, from a supposition that the matter could not be made perfectly clear to them, through want of technical information on their part.

* Page 284.

† Dr. W. Hunter, whose moral sentiments on the important question of Infanticide I cannot sufficiently admire, has the following observation, which will admit of more extensive application. "In general, I am afraid too much has been left to our decision. Many of our profession are not so conversant with science as the world may think; and some of us are a little disposed to grasp at authority in a public examination, by giving a quick and decided opinion where it should have been guarded with doubt; a character which no man should be ambitious to acquire, who in his profession is presumed every day to be deciding nice questions, upon which the life of a patient may depend."—*Paper, on the Uncertainty of the Signs of Murder, &c.*

Medico-legal Authors defective on the Subject of Evidence.—
p. 15.

Some of the earlier writers in this department are exceedingly voluminous; and they deserve to rank high in the estimation of those who set store by literary curiosities, as well as the profession whom they more particularly concern. One of the earliest* is Fortunatus Fidelis, who published a quarto volume, entitled *De Relationibus Medicorum*, at Palermo, in 1602. It contains some valuable as well as curious matter, but, excepting a few remarks at the close, under the head of *Admonitiones ac Præcepta*, (a specimen of which will be found hereafter,) nothing very applicable to our present purpose. In Book IV. of the *Medicus Politicus* of Rodericus à Castro, (a Portuguese physician,) published at Hamburg in 1614, also in one vol. quarto, there are two chapters thus entitled—*Testificandi methodus circa eos quibus venenum fuit exhibitum*; and—*Ratio testificandi in vulneribus capitis, et in iis qui aquâ fuerunt suffocati*: but I can extract nothing very relevant from them.

The greatest name of that period is unquestionably Paul Zacchias. Every medico-legal writer of note down to the present day has quoted him, and I confess that it is difficult to go to his ponderous tomes without deriving something like satisfaction, even in the midst of much disappointment†. The reader will, perhaps, indulge me with his attention, if I hazard a brief notice respecting one of the earliest and probably brightest luminaries of the medico-political hemisphere, and the author of a very *curious* production.

* Prior to this work appeared the *Methodus Testificandi* of Baptista Codronchius, from which, in all probability, something might be gleaned, though, I fear, but little to the precise purpose required among us. It was published in 1597; but I have not been able to meet with it. On this account I have not mentioned it above. Gœlické describes it as solving some difficult and interesting questions, and as containing certain “forms of testimony,” particularly useful to *judges*: if so, I fear the remarks in the text, (pages 15 and 16,) with regard to medico-legal writers in general, will fully apply to this author.

† Opinions were much divided as to the merits of this author, among those who wrote about the same period, and soon after him. Zacutus Lusitanus calls him the *Mercury of Physicians and Lawyers*. Paulus Ammaninus does not seem much to admire Zacchias, and designates Zacutus *Mendaciorum parens*. Michael Albert likewise criticises him severely, giving him little credit beyond that of having shewn a good example, in throwing off the trammels of ancient authority. It is quite allowable for *us* to entertain as favourable an opinion as I have expressed towards Zacchias; for he is at least as valuable now as some of those authors themselves can possibly be considered.

He was principal physician to Pope Innocent X. and to the Ecclesiastical States, styling himself, in his great work, *Totius Statûs Ecclesiastici Proto-Medicus Generalis*. This work has generally consisted of three folio volumes, entitled *Quæstiones Medico-Legales*; and composed of nine books; subdivided into titles, and these again into particular questions. The distinctions are exceedingly arbitrary and artificial, but the index is so elaborate, and the minute subdivisions are so carefully and perspicuously marked and headed, that the matter is particularly accessible — no small excellence in a work of such magnitude and comprehensiveness. The first book was published at Rome in 1621, the second in 1625; and so on till the seventh, (and last published there,) in 1635. The eighth and ninth appeared at Amsterdam in 1666. There have been various editions, superintended by different eminent men.

So far I have borrowed from Gœlické*, who is not quite correct. I have Zacchias in eleven books, and in two volumes, the first of which was printed at Amsterdam in 1651, and bears the name of no editor; on the contrary, it would appear to have been either superintended by the author, or a reprint from some other edition by himself. It contains (exclusive of the index) about 900 dense folio pages. The other volume bears the imprint of the Leyden press, dated 1660; and contains a century of decisions by the *Sacra Rota Romana*, collected by Lanfranc Zacchias—but who this person was, I cannot pretend to say.

When I state that my Zacchias contains eleven books, I do not mean that they are numerically so; for they go no further than ten, which is one more than the number ordinarily ascribed to Zacchias. The first volume consists of nine; the second (which does not form the continuation of the former, being of a different edition,) consists of a ninth and tenth; the first composed of matter quite distinct from all that preceded it. The original ninth book (of Volume I.) consists of 34 consilia: these and others, making in all 85, and the decisions already mentioned, compose book tenth.

With regard to *Evidence*, there is nothing beyond a few passages relative to the qualifications of witnesses, as to real or alleged impediments connected with matters of medico-forensic import. Zacchias died in 1659, at the age of 75.

Joh. Bohnius published a considerable quarto volume at Leipsig, 1704, *De Officio Medici Duplici*; which contains two chapters on medical men deposing, worthy of perusal, but not available for our particular use in this country.

The ponderous tome of Michael Bernard Valentinus, of Giessen, entitled *Corpus Juris Medico-Legale*, published at Francfort-on-the-Main, 1722, and consisting of a great variety

* Medicina Forensis.

of matters of the most miscellaneous, and many of them of the most singular description*, contains nothing to our purpose.

I shall mention but one work more of corresponding pretensions. Michael Albertus in 1725 published five thick quarto volumes, under the title of *SYSTEMA Jurisprudentiæ Medicæ*—a palpable misnomer; the characteristic word should have been CHAOS. The first volume, however, contains some sensible ethical remarks on the duty of a testifying practitioner, though their quotation would here serve very little purpose†.

Form of Swearing in Scotland.—p. 21.

The witness, holding up his right hand, repeats the oath, which is administered by the judge.

“I swear by God, and as I shall answer to God at the great Day of Judgment, that I will tell the truth, the whole truth, and nothing but the truth, in so far as I know and shall be asked.” Certain preliminary questions are then put as to the purity of the witness’s motives in giving evidence, absence of animosity towards the party accused, and of instructions received, as to what is to be deposed‡.

I have mentioned that Scottish Presbyterians sometimes require to be sworn in the above manner, even in the English courts. This was the case with several witnesses at Carlisle, in the year 1746, on the trials of the rebels. There goes a story, that one witness, having been examined under the English form of adjuration, gave an account so palpably wide of the truth, that the counsel for the prosecution had him re-sworn, after the form of his own country. He then gave evidence of a very different stamp. Being asked how he came to utter so many falsehoods when first sworn, he replied:—“Sworn! There’s an unco’ difference ’atween blawin’ on a beuk, an’ sennin’ ane’s saul to hell!”

Appointment of Coroners.—p. 29.

These officers are not necessarily chosen from among lawyers; there are some of the medical profession; and I have heard both magistrates and lawyers admit that they ought to be so more

* In the fourth section of the first part of the *Pandects*, he discusses (among other questions) the following—whether medical degrees should be granted to the sons of hangmen, and to Jews—whether consultations should be held with Jewish physicians, &c.

† I hope there is no medical jurist who will feel disposed to quarrel with me for this dry note; if there be others ready to cavil—they may do so to their hearts’ content.

‡ See the text above, page 108.

extensively. By far the greater portion of the coroner's duty relates to the causes of death under unusual circumstances; and inquests would, perhaps, be more efficiently held, if conducted under the superintendence of men of physical science, conversant at the same time with the nature of evidence, and the forms required for judiciary satisfaction. All that can be requisite, in regard to these latter, will not be difficult of attainment to a man of ordinary parts and moderate application. *Coroners' law* lies within small compass; and to acquire a competent knowledge of the duties of that office, must be a less arduous task than to become an efficient justice of the peace. I should like to see the surgeons of England more generally appointed to these situations. *Burn's Justice*, *Blackstone's Commentaries*, and probably the occasional study of an act of parliament, may comprise the greater part of the indispensable lore—if not, the distance it may be necessary to travel beyond these cannot be very great; and a knowledge of the route is by no means difficult of attainment.

Exemptions from Public Burdens, granted to Medical Men.—
p. 32.

“Physicians, surgeons, and apothecaries, have been exempted from the performance of various civil duties, by several acts and charters; and those exemptions, which were at first limited, have by custom become so general, that they may now be considered as legally established*.” It would appear, however, that exemption from bearing arms can be pleaded by the college of physicians only, and that they are merely exempt from *personal* duties, being amenable to contributions for their performance by others.

*License of the Bar, with respect to Witnesses.—*pp. 38, 78.

I shall make no apology for quoting the following observations from a daily paper, which often presents lucubrations worthy of a more durable medium of communication.

“Complaints are often and very justly made, of what is called the license of the bar; we mean the extraneous matter which advocates introduce into their addresses in courts of justice, and the violent, offensive, and intemperate manner in which persons are sometimes treated, who are called upon to give evidence. We are well aware of the difficulty which exists in eliciting the truth from unwilling and guilty witnesses; and if the practice we allude to were confined in its exercise to such persons as those, one would not much pity the ordeal they had to undergo. But those who attend courts of justice must be

* Paris and Fonblanque, I. 72.

aware, that the system we complain of is not confined to cases of this description, but is, in fact, used with little or no discrimination; that it is sometimes employed in proportion to the apparent timidity of the subject on whom it can be exercised; and not unfrequently, in the instances of those towards whose sex the gallantry and good feeling of mankind have by common consent assigned tenderness and protection. Of late a new evil has arisen, or if not arisen, has come much more into use; we mean the practice of joking, and of very bad wit, indulged in at the bar, and sometimes on the bench. We are too fond of a joke ourselves not to encourage it in its proper place and season; but as "praise undeserved is satire in disguise," so we consider that jocularities upon serious subjects is at least a proof of a bad and miserable taste. In criminal cases, low humour must be nearly always misplaced; yet we have known cases in which the life of a party was at stake, where the advocate has been so injudicious as to give way to ill-timed pleasantry, and even to lead the witnesses away from the real facts of the case, to illustrate and carry on some trumpery pun or inuendo of his own. We cannot but think it due to the dignity and solemnity of our courts of justice, and to the awful interests which are there at stake, as well as to the credit and respectability of the bar itself, that this disreputable practice should be repressed. If a man would not laugh, joke, or pun on the death-bed of his friend or relation,—why should he do so upon the trial of a person whom he has been paid to prosecute or defend, in a case which implicates his life or liberty? In short, where we should consider humour misplaced in our own case, why should we employ it in that of another? Good sense and good taste, then, should repress so silly and unworthy a practice, which, 'though it make the unskilful laugh, cannot but make the judicious grieve.'—*Morning Herald*, Sep. 22, 1824.

Resistance to the Advocate.—p. 81.

The conduct I would sanction in this respect, is not that animadverted upon at page 111. I have heard a very eminent lawyer, after putting a peremptory interrogation to a witness, add, with no small energy,—"Now, sir, that is my question, and I will have an answer, *yea or nay*." It is not likely that such an overbearing manner will often be observed towards us; but something allied to it might be shewn by an advocate who, having framed a question especially to suit a particular purpose, might not be inclined to trust the discretion of the witness, or disposed to risk any other answer than that he has baited his question for. Our business must be to inform the court and jury of the truth of the matter, and to disregard the *tenour* of the question, when it is apparent that it is not intended to elicit the truth; still more so, if its obvious bent be to disguise it. It is to be confessed,

that some self-possession may be necessary on the part of the witness, in *discharging his conscience* in this way.

Phraseology of Evidence.—p. 86.

In addition to the quotations given in the text, I shall take the liberty to introduce the following, from Fortunatus Fidelis.

“ Illud etiam advertendum est, ne in tradenda relatione nimis obscuri ac intellecti difficiles simus: neque eo sermone utemur qui nimio cultu affectatus, aut studiosâ curâ perquisitus sit.” “ Cujus rei gratiâ, obscura quædam vocabula, quæ medicis quidem notissima, sed jurisconsultis minus intellecta, tametsi in relationibus apta esse videbuntur; ego tamen faciliè præteribo, ac communiora potiùs notaque magis pro his interponam. Ergo libenter ego, si se unquam offert occasio — pro *symptomate, morbi effectum* — pro *causa, ardentem febrem* — pro *diarrhœa, fluxum ventris* usurpabo,” &c.—*De Relationibus Medicorum—Admonitiones ac Præcepta.*

Speaking from rare Cases and Exceptions.—p. 88.

It may, perhaps, be thought, that upon this preposterous absurdity I have been sufficiently explicit in the text. I shall take the liberty, however, to inscribe my *rationale* of such an attempt as to argue *against* a rule upon the ground of an exception. It may arise from over-conceit of one's logical attainments, or from contempt for those of an antagonist, or from an obstinate disposition to fight one's way *through* a dilemma, instead of quietly *backing out* of it. Such men would whip the Hellespont, or kick the waves, if they did not get out of their way when ordered.

Revelation of Secrets.—p. 95.

There is a charm about the name of GREGORY, of which I am not afraid to avow the influence,—the less so, as their day is apparently gone by. Although the name be not extinct, at present we miss the light that till of late shone so brilliantly on medicine. Let this be a sufficient apology for the following quotation:—

“ Secrecy is particularly requisite where women are concerned. Independently of the peculiar tenderness with which a woman's character should be treated, there are certain circumstances of health, which, though in no respect connected with her reputation, every woman, from the natural delicacy of her sex, is anxious to conceal; and in some cases, the concealment of these circumstances may be of consequence to her health, to her interest, and to her happiness.” These are the words of the author of “ The Father's Legacy to his Daughters.”

The Hippocratic Oath.—p. 96.

This relic of remote antiquity has for many years slipped from the common view of the profession. I cannot imagine that affording it a place here, can give offence elsewhere.

"I swear by Apollo the physician, and Æsculapius the surgeon, likewise Hygeia and Panacea, and call all the gods and goddesses to witness, that I will observe and keep this under-written oath, to the utmost of my power and judgment.

"I will reverence my master, who taught me the art. Equally with my parents, will I allow him things necessary for his support, and will consider his sons as brothers. I will teach them my art without reward or agreement; and I will impart all my acquirements, instructions, and whatever I know, to my master's children, as to my own; and likewise to all my pupils, who shall bind and tie themselves by a professional oath, but to none else.

"With regard to healing the sick, I will devise and order for them the best diet, according to my judgment and means; and I will take care that they suffer no hurt or damage. Nor shall any man's entreaties prevail upon me to administer poison to any one; neither will I counsel any man so to do. Moreover, I will give no sort of medicine to any pregnant woman, with a view to destroy the child. Further, I will comport myself and use my knowledge in a godly manner. I will not cut for the stone, but will commit that affair entirely to the surgeons.

"Whatsoever house I may enter, my visit shall be for the convenience and advantage of the patient; and I will willingly refrain from doing any injury or wrong from falsehood, and (in an especial manner) from acts of an amorous nature, whatever may be the rank of those whom it may be my duty to cure, whether mistress or servant, bond or free.

"Whatever, in the course of my practice, I may see or hear, (even when not invited,) whatever I may happen to obtain knowledge of, if it be not proper to repeat it, I will keep sacred and secret, within my own breast.

"If I faithfully observe this oath, may I thrive and prosper in my fortune and profession, and live in the estimation of posterity; or on breach thereof, may the reverse be my fate!"

Exclusion of Strangers from Court, when Secrets are to be revealed.—p. 99.

Probably such a proposal has never been hinted at before, and perhaps all the idle mouths of England would open against such an attempt. Justice in this country is administered with open doors—is always said, and very generally believed; but in fact it is not so. There is no country where admittance to courts is more difficult. If any trial of importance be going on, interest or

money alone can obtain admission for a *few* spectators. I do not object to this, because the delinquencies of human nature are great *captanda* for the vulgar; and any thing like the public exhibition of a culprit would seduce all the thoughtless portion of the community away from the labour necessary for their support, and that of their families, were they certain of access to the scene of action. Nor is it unlikely that the wickedness of the imitative principle of human nature might not do even more direct harm;—the *benefit* to those who witness public executions has been called in question. On certain occasions, the judge is said to order females out of court—why? Because certain things are to be revealed, which are not fit for them to hear. It can be nothing but want of precedent in fact, and fastidiousness in principle, that prevents the practice from being extended to other occasions, and to both sexes. True, in the matters under notice, the calls are rare; but I will venture to say, that were the same authority exerted in such cases, not a serious complaint would be uttered. The British public is, upon the whole, a reasonable community; and when their passions are not excited by designing rogues, or their necessities sharp-set by calamity, they are disposed to acquiesce in the measures of their proper directors. I may perhaps add, that if there be one set of their constitutional superiors to whom they are more ready to bow than another, it is to the judges of the land.

Medicine not a proper Subject of Traffic.—p. 102.

I do not mean to hint that men should not live by their calling; but, as a liberal profession, I would insist that the healing art should be considered only as the practical application of a science, to which all men of extensive education might do well to devote some attention. As far as the bodily structure *meets the eye*, this is very widely the case; hair, eyes, ears, teeth, nails, skin, and their accidents and derangements, are the objects of considerable solicitude, on the part of many who would in no way busy themselves by attending to corresponding matters, that equally and more vitally interest them. Dr. Gregory argues well for the study of medicine on the part of gentlemen who may not intend to practise it. The closing words of his lectures are these:—

“I hope I have advanced no opinions in these lectures, that tend to lessen the dignity of a profession which has always been considered as most honourable and important. But I apprehend this dignity is not to be supported by a narrow, selfish, corporation spirit; by self-importance, by a formality in dress and manners, or by an affectation of mystery. The true dignity of physic is to be maintained by the superior learning and abilities of those who profess it, by the liberal manners of gentlemen, and by that openness and candour which disdain all artifice, which invite to a free inquiry, and thus boldly bid defiance to all that illiberal

ridicule and abuse, to which medicine has been so much and so long exposed."—*Lectures on the Duties, &c.*

Importance of selecting Men of Professional Eminence, as Scientific Witnesses.—p. 103.

It has been regretted by sensible writers, that the calls to attend on the administration of public justice have been rarely answered by the higher or better educated members of the profession. None but these, in my opinion, ought to be admitted as witnesses; and the old-fashioned parsimony of the public purse, for the purpose in question, should be done away with. It has lately been very sensibly (I will not presume to suppose undeniably) stated, that while every other science has been advancing in improvement, that of jurisprudence has been standing still; and that the lawyers are far behind their collaterals of other professions in point of liberal and enlightened views. This remark applies not to them at all as individuals, but as a class of men upon whom certain observances are as imperative as their professional costume. They are undoubtedly under the yoke of antiquity; for *precedent*, alias *authority**, supersedes every other consideration. Why they should persist in receiving any evidence whatever said to be medical, that may be offered to them, I cannot imagine. It is very much the fashion, in the present day, to give the apothecary credit for knowing more than the physician; and it is not every man who wears even the *legal* qualification so to call himself, who is in the original sense of the word *doctor*. There ought, in fact, to be some provision by law, for furnishing adequate aid to courts of justice, to make it the business (and why not the interest?) of unexceptionable *experts*, as the French designate them, to apply themselves to that duty.

To receive the evidence of men, *soi-disant* professional, without inquiring into their pretensions, is highly censurable; but on finding that the court has before them a student, or an apprentice merely, and because he happens to be introduced to notice as witness of a fact, to proceed with an examination as to matters of opinion, is unfair towards the witness, indecorous to science, and even gives a handle to reflect on the mode of administering justice.

Of Medical Liberality.—p. 107.

The general tenour of this volume is so closely allied to the important branch of *Medical Ethics*, that little apology is required for here and there obtruding a few excursive strictures on the character and economy of the profession. On the present occasion, I shall chiefly restrict myself to an extract or two from the two choicest writers we have in the department—and of whom I have already had occasion to make repeated mention.

* See page 128.

But I beg to premise, that I assume not the pretension to liberality in *opinions* merely. Some of our foes will make even this a vice, by charging us with a latitude beyond the bounds of orthodoxy; and in this let every man answer for himself. While I believe we are particularly free from bigotry, I have also good reason to think, that we are not more extensively tarnished with infidelity than our neighbours. At all events, there are a few Christian precepts that I defy any order of men to observe more extensively than it is our custom to do—but to our quotations.

With regard to the charge of infidelity, Dr. Gregory observes—“Men whose minds have been enlarged by knowledge, who have been accustomed to think and to reason upon all subjects with a generous freedom, are not apt to become bigots to any particular sect or system. They can be steady to their own principles without thinking ill of those who differ from them; but they are impatient of the authority and control of men who would lord it over their consciences, and dictate to them what they are to believe. This freedom of spirit, this moderation and charity for those of different sentiments, have frequently been ascribed, by narrow-minded people, to secret infidelity, scepticism, or at least, to lukewarmness in religion; while some, who were sincere Christians, exasperated by such reproaches, have sometimes expressed themselves unguardedly, and thereby afforded their enemies a handle to calumniate them. This, I imagine, has been the real source of that charge of infidelity, so often and so unjustly brought against physicians*.” Dr. Percival has a very curious and interesting note, connected with this and other points in the medical character. While he seems to admit, in some degree, the validity of a charge against us as to neglect of public worship, and attempts to account for it in a way that I am not quite satisfied is just†, he also praises the Catholic spirit which animated Sir Thomas Brown, and other worthies, and permitted them to worship God in all places devoted to his service. He goes on to quote Dr. Samuel Parr, who in one breath allows to physicians the pre-eminence over the other liberal professions, in erudition, in science, and in habits of deep and comprehensive thinking, and charges some of us pretty roundly with a propensity to scepticism. He is complaisant enough, however, to ascribe this to “metaphysical principles, which evince the strength, rather than the weakness of the human mind, when contemplating, under certain circumstances, the multiplicity and energy of physical causes.” He enumerates several by name who have been distinguished as honourable

* Lectures on the Duties, &c.

† Medical Ethics, note xii. In my humble opinion, the blame is more ascribable to neglect on the part of parents and guardians, than to the natural influence of medical, rather than of other studies. I refer the reader to the passage particularly.

exceptions ; and among them Gregory, whose sentiment, above given, Dr. P. shortly afterwards quotes.

To this I must add one excerpt more, from the same article : “ Perhaps no profession is more favourable than that of physic to the formation of a mental constitution, which unites in it very high degrees of intellectual and moral vigour ; because it calls forth the steady and unremitting exertions of benevolence, under the direction of cultivated reason ; and by opening a wider and wider sphere of duty, progressively augments their reciprocal energies.” I hope this will tempt the reader to repair to the source whence I have derived these excellent remarks, and where many more will reward his curiosity, and benefit, I hope, some nobler impulse.

Let me hazard, by way of inference, that a blind belief, or one countenanced by ratiocination, may, for aught I am disposed to say to the contrary, be equally advantageous to the possessor ; but I cannot lay reason at the feet of those who would trample on it—the less so, as the implicit followers of guides, often not clearer in vision than themselves, are very apt to bespatter, with the mire of the ditch into which they tumble, those who would help them out. It is but a sorry compliment to Christianity, to assume that it cannot even outshine the lights of science ; and the opinion cannot be entertained but by those who are unacquainted with the real history of the scientific character.

As to *liberality* of a lower cast—that which respects the sordid affairs of human life—I boldly demand to be told, what class of men does *so much* to alleviate the distresses and to promote the welfare of society, without worldly recompense ? It is not unusual to hear of advantages to ourselves, in much of what is done in this way. It is an unworthy insinuation—but, for brevity's sake, I shall for once admit it, and to the fullest extent to which it can be urged. Having done so, there yet remains ample and sufficient warrant, upon the *purest grounds*, to repeat the demand.

Shall I be pardoned an anecdote ? It is *literally* a fact, and very widely applicable. A surgeon of my acquaintance, of most liberal views and conscientious principles, was called to see a person in the garb of a gentleman, who, in travelling through the place, was overturned in a carriage, and apprehended that he had dislocated his shoulder. After careful examination, my friend pronounced the stranger to be free from injury. The other coolly inquired, what he was to pay ? The surgeon, somewhat piqued, answered, ‘ Nothing,’ and walked away. It came to his knowledge, soon afterwards, that this person related the circumstance of his having for once met with an *honest surgeon*, who declined taking a fee when he found there was no work to be performed ! Without referring to the study and expense the practitioner had been put to ere he could acquire the knowledge requisite to enable him to pronounce an opinion of a nature to

set the fellow's mind at ease, I shall be uncharitable enough to suppose, that such a narrow-minded being would have been the very person to have brought an action for *mala praxis*, had he suffered inconvenience from an erroneous opinion.

Sources of Experience.—p. 117.

I have been unwilling to load the text unnecessarily with references and quotations; but on so rare, or, at least, novel a subject, I am not a little pleased when I can bring forward good authority. I shall, therefore, make no apology for strengthening what has already been done in this way, by a passage from the elegant work which I am not yet done with quoting.

“ We obtain experience either by the evidence of our own senses, or by the testimony of others. 1. The testimony of our senses, though generally considered as one of the highest degrees of evidence, is often fallacious, and often defective.”—“ Although the impression is properly made on organs that are in their sound state, yet the ideas conveyed thence to the mind may be so varied and modified by the imagination, as entirely to mislead the judgment. Thus every part of natural history, and medicine above all others, is crowded with facts, attested by eye-witnesses of supposed veracity; which facts, notwithstanding, never had any existence but in their own imaginations.

“ From a failure likewise of memory, and from imagination assuming its place, we believe upon the supposed evidence of our senses, although, in fact, we never had such evidence.—”

“ 2. The experience which we trust to from the testimony of others*, is liable to the same imperfections with our own; and often to the additional inconvenience of our uncertainty with regard to the accuracy or veracity of our authors†.

“ Although facts afford the only solid foundation for genuine science, yet, when we consider them as unconnected with other facts, they convey but little instruction. The phenomena of Nature are infinite; but the capacities of the human mind, and particularly the memory, are limited. If these phenomena, therefore, were not reducible to certain general principles or laws, our experience of particular facts would do us but little service. But there is a strong propensity in the mind to be delighted with analogies‡, to compare and connect facts that resemble one another, and, by this comparison, to reduce them to certain general principles, to apply such general principles to account for

* The *derived experience* of Campbell.

† This is certainly bringing *authority* to the level of *personal experience*; but the converse, with regard to want of superiority in the latter, is equally deducible from our author's reasoning.

‡ Suprà, page 119.

other effects, or to direct us in the production of them. The business of true philosophy is to avail itself of this natural propensity, to discover these connexions, and reduce them under certain rules or principles, called *Laws of Nature*."

To dismiss the subject—for I begin to think of the reader's patience—After all this mighty affair of *experience*, naked and bare as it is cited to the bar of justice, (the only point, perhaps, in which it too often wears any resemblance to its real or supposed progenitor, truth,) this *personal experience* must begin in *authority*. It is not the experience of the seventh son of a seventh son, that justice seeks for; it is that of an educated professional man. Now I would ask, whether the knowledge acquired, the facts seen, and observed, and remembered, and compared, during the period of his pupilage, are to go for nothing in the sum of his experience? If not, if they are to be taken into account, what do they amount to, but derivations from the testimony of his teachers—*derived experience*—*authority*?

Influence of Great Names on Medicine.—p. 126.

"A bigotted attachment to certain great names has done much mischief to science. The history of philosophy exhibits to the world, from time to time, some man of distinguished ingenuity, who has erected a system. This system has been adopted for a few years. Learned men have commented upon it; some have diffusely explained it, others have abridged it. In the mean time, none of these authors rose higher than their source; few of them so high. In the succession of a few years, another original genius has arisen, exposed the weakness of his predecessor's system, and established another in its stead. This, after having the like honours paid to it by commentators, expositors, and epitomisers, has sunk in its turn into contempt and oblivion. This has been the fate of medicine, from the days of Hippocrates down to the present time, when there appears to be a general disposition to throw off the shackles of authority, to appeal to nature in matters of fact, and to assert the right of private judgment in matters of opinion and reasoning. I do not mean to insinuate the possibility of every individual's thinking for himself in these matters. Nature never intended the bulk of mankind either to think for themselves, or to act from principles of their own. I mean only to express my regret that men blessed with superior talents should be swayed by an authority they ought to have controlled; and should assent to doctrines which a little exercise of their own judgments would have shewn to be ill-founded*."

The accomplished son, and ultimate (though not immediate)

* Lectures on the Duties, &c.

successor of this eminent man, in the great medical chair of the University of Edinburgh*, used to lay it down, among the earliest lessons given to his pupils, that although at first we must necessarily take every thing that a teacher says for granted, when once instructed, we are at full liberty to use our own judgment. This was his apology for differing in some things from his illustrious master and predecessor, of name imperishable. The very learned and truly philosophical professor who now fills the same important post, when the duties of another department were his care, used to express himself, if not in the following precise words, yet so nearly so, that I have no hesitation in pledging myself to the fidelity of the passage, even as a quotation. Among the causes enumerated, by him, as tending to retard the progress of medicine, was "a blind attachment to great names and early prejudices. People with difficulty abandon the opinions of early life. No physician, above forty years of age, adopted the theory† of the circulation when first discovered by Harvey. This arises from conviction of the truth of those opinions, from attachment to authors and masters, and from difficulty of receiving new opinions. Among the ancients this prevailed to a great extent. After the fall of science‡, the theories of medicine were few; but men were much attached to them. Hippocrates, and other authors, were applied to for facts which might have been better settled by observing nature ||."

Reliance on our own Authority.—p. 127.

There may appear to be a mistake as to the use of the last word, on reference to the passage in the text. It would be a light matter to acknowledge such a thing at once, under the painful consciousness with which I am forced to let a very faulty dissertation pass at large into public view. But here it is not so. When a person is competent, or considered competent to give information, and his information is allowed to impress others with a persuasion of the truth of any thing, they receive their opinions, and form their belief on his *authority*. Now this is precisely the situation of a scientific witness. Whatever information the court

* Drs. John Gregory and Cullen gave lectures alternately on the Theory and Practice of Medicine; although Dr. G. held the chair of the latter, to which, on his death, Dr. Cullen succeeded. When this great man died, (1790,) Dr. James Gregory was transferred from the chair of the Institutes to that of the Practice. It was said of him, that (with the exception, perhaps, of Theology,) there was no chair in the University which he was not equally competent to fill!

† Might it not be said, *believed the fact?*

‡ During the dark ages, when, to use the pictorial language of JAMES GREGORY, "Medicine slept amid the universal lethargy!"

|| Dr. James Home's Lecture on the *History of Medicine*, given at the close of his course of *Materia Medica*, April 21, 1810.

obtains from his evidence, they make use of upon his authority, whether his evidence be the offspring of his own personal experience, or of experience derived from the testimony of others.

Allegations of "Inutility," as to the Performance of certain Duties.—p. 132.

Various exemplifications of this are yet before the reader, to which he will find ready access by consulting the index. I have here no inclination to comment, and shall do no more than apprise both the medical profession, and the authorities under whom they may be called upon to perform the practical duties required for the ends of justice,—

1st. That no conceivable period of delay in the opening of dead bodies, (under circumstances not otherwise extraordinary,) should be received as a plea for omitting that *rarely excusable* process. I should almost be inclined to say, that as long as the corpse remains sufficiently undecomposed to be susceptible of instrumental interference, the inconvenience, not to talk of the danger, of putrescence may be corrected. Let the medical practitioner become acquainted with the means of obviating this obstacle, and then it will be part of the judiciary process to apply them*.

2dly. That in cases of *infanticide*, an intelligent medical jurist can hardly fail to draw an inference as to the fact of vitality, after a proper investigation; but it must be a proper one, and the best criterion that it has been so, would be a circumstantial inquiry as to the steps resorted to, in a manner analagous to that at present observed in cases of alleged poisoning†.

3dly. As to *poisons*, I have already hinted that courts are quite scrupulous enough as to receiving bare *dicta* in this matter. It is no longer possible for a medical witness to *get off*, by saying that so many hours or days have elapsed since the administration of the substance, that no traces of it could be found in the body, and that to seek for such would be vain.

Improvements in Toxicology.—p. 133.

This has become of late a new science, for which we are chiefly indebted to the French chemists. Through the experiments that have led to the discovery of principles in many active vegetables, in which their powers have been shewn to reside, we have also

* Of course the intelligent practitioner will be aware that I allude to the discovery of M. Labarraque, respecting the efficacy of the chloruret of lime; and more particularly to the marked case in which it was applied by M. Orfila and others. For particulars concerning these, he may consult any of the medical journals of last year.

† At present the practice of the courts is rather to shun inquiry, as much as possible.

been led towards methods of verifying their existence, under circumstances of combination analogous to mineral poisons. In all probability the day is not far distant, when there will be established tests for these bodies, as conclusive as any that now exist for the corrosive metals *.

Allowance to Scientific Witnesses for Loss of Time.—p. 135.

In many of these cases, it does appear to me that *public justice* may be a *private injury*. But, viewed only in this light, there would be little ground to hope for any attention to a claim for considering the matter. Let us go further then, and assert that the due administration of justice itself may, and perhaps does, suffer from the parsimony with which the public purse is employed for its advancement. It has been an object worth the aim of cruel miscreants, to drag innocent persons to the bar of condemnation, in order to receive, and share among a *gang* of conspirators, the price of blood. It is an object of no small importance to witnesses of probity, to avoid lending their aid to convict the most atrocious, because they may thereby involve themselves and families in serious inconvenience, by neglect of their proper means of support. There are many who can ill afford their time and attendance, who would spurn at the plea of indigence, in order to obtain the pittance of remuneration, for which they might in that way apply with success. With regard to professional or scientific witnesses, the best are not always to be had, because the absurdity of requiting them *often*, as alone they can be required; would throw difficulties in the way that would raise complaints in some quarter or other; and public prosecutions are, in this respect, generally supported by evidence (I will not say in itself inferior) that carries less weight than such as might be obtained, were it more usual to call upon those who are considered the best professional authorities.

Case of Donellan.—p. 139 †.

I am about to enter on rather a formidable task, and one for which I am but inadequately qualified. The common opinion has, for more than forty years, been opposed to that which I have imagined I saw reason to adopt; and the sentiments even of lawyers have been pretty strongly expressed in favour of the general impression. For my own part, I should be desirous of confining myself strictly to the medical features of the case, and conceive

* Some progress in this seems to be already made. In the London Medical Repository for March 1824, p. 263, is an abstract of certain investigations, pointing out distinct phenomena that result from the application of particular substances to some of these active principles.

† See also the evidence, given in Part II.

that what may follow of a tendency to lead from these, will be rather the suggestions of others, than my own. Supported, as I have been, by several most respectable authorities, written and verbal, in the view I have taken of this matter, I shall not shrink from entering into its merits, with a freedom corresponding to that which I have thought it my duty to observe generally on the present occasion.

Donellan was convicted on *medical testimony*, at least such has been the prevalent opinion; and the testimony itself has been hardly less excepted against than the use that was made of it. "There is not (I will affirm) on record a more melancholy and striking instance of the unhappy effects of popular prejudice, and the fatal consequences of medical ignorance, than the case of Capt. Donellan, who was executed in England about two years ago, for the murder of Sir Theodosius Boughton." This is an extract from the first attempt to write upon Medical Jurisprudence in our native language*; a passage which, no doubt, contributed to strengthen impressions unfavourable to the doom of the unfortunate prisoner, more particularly in the minds of those who were most concerned in the due apportionment of blame—I mean the members of the medical profession. But the passage is little more than declamation; and if the immediate context be added, brought forward as it is, to augment the force of the sentiment, we must admit that its very strength is weakness. "Eight or nine days after Sir T. was buried, a surgeon had the body raised, although it was in the month of June, and proceeded to the dissection, notwithstanding a physician, and another surgeon present, declared, that from the putrid state of the body, no information could be obtained on which any opinion could be grounded respecting the cause of death, &c.†" Is this an argument upon which to found so grave a charge? Is this to be retained as an argument, even in compliment to the state of knowledge at the time?—when on the trial it was particularly sworn to, and sworn by the physician himself, in answer to cross questions from the prisoner's counsel, that *the body was much fairer than had*

* Remarks on Medical Jurisprudence, by W. Dease, Surgeon, Dublin.

† I must add that the passage contains also this clause:—"The first surgeon proceeded in the dissection, saying that to him such a subject was rather a *posey*, and decidedly gave his opinion that Sir T. died of poison." The whole of this sentence is both circumstantially and literally without foundation. No such expression is even alluded to in the report of the trial, in the most distant manner. The person who did open the body never made his appearance, till a day after the physician and the surgeon alluded to had declined; and, according to the views of the medical jurists of the present day, was the person to be commended. The tenour of the above-named author's animadversions is to censure him for acting in opposition to the opinion of the others.

been expected, and not so putrid *. At all events, as this tract was not published until years after the trial, and of course not until after many opportunities and advantages of acquiring all possible knowledge as to facts, it was at least absurd to adduce an advanced stage of putrefaction to contravene inferences, drawn from a dissection performed nevertheless; and in the course of which dissection, no evidence as to obstacles arising from the state of parts could be elicited, by a most pertinent and pertinacious examination, with that explicit view.

A much later, and otherwise estimable writer in the same department, to whom a longer lapse of time must have afforded greater latitude for deliberation, and to whom also propinquity of residence to the scene of the event *may have* conceded information not generally known, has the following passage. "In the case of Mr. Donellan, a medical witness swore that Sir T. B. was poisoned by *arsenic*; afterwards that he was destroyed by *laurel-water*, although IT WAS NOT PROVED THAT THE DECEASED WAS POISONED, OR EVEN THAT ANY POISON HAD EXISTED. Mr. Hunter declared that all the symptoms might arise from apoplexy or epilepsy, and that the appearances on dissection explained nothing but putrefaction—yet this unfortunate man was executed—†." I forbear any analysis of this passage—and shall merely take the liberty to suppose that the author must have employed his mind attentively in considering the nature of PROOF, or the *economy* of EVIDENCE, before he opposed this opinion to the verdict of twelve men—in the ears of whom, when they went out to deliberate, the following words must have been yet ringing:—"You must take all the circumstances of the case together into your consideration, and remember that it is for you to form your own opinions, and to decide upon the fate of the prisoner, in the doing of which I am sure you will act according to the best of your judgment and your conscience, to find out the truth of the case—AND AS YOU FIND THAT TRUTH, SO YOU WILL PRONOUNCE YOUR VERDICT†." Dr. Male has observed, that a medical witness swore Sir T. B. was poisoned by *arsenic*. The witness in question was Dr. Rattray, who, in *his cross-examination*, swore expressly thus: "At that time (on the coroner's inquest) I did think he died of *arsenic*; but I am now clear that I WAS THEN MISTAKEN!" Again: "Did you not, after you heard Lady Boughton describe the symptoms, and after you saw the body opened, give it as your opinion that he died of *arsenic*? I have had such an opinion." And again, *still on his cross-examination*!!

* Evidence of Dr. Rattray.

† Elements of Juridical or Forensic Medicine, by G. E. Male, M.D., &c. Birmingham, p. 66, (note).

‡ Trial, &c., taken in Short-hand by Joseph Gurney. Lond. 1781, folio.

“ You was mistaken at first relative to forming an opinion that the death was occasioned by arsenic? YES*.”

All the medical jurists of this country, and the most distinguished of the United States, have taken pains to record their dissent from the foregoing opinions†. I have considered the

* The reader will find these questions in their proper place below. I must here note, that the author of the work in question does not say, that this contradictory evidence took place *on the trial*, but *in the case*—which must refer of course to the coroner’s inquest. But the prisoner was not tried by the evidence given before the coroner; and we can look at nothing, in estimating the merits of that evidence upon which he was found guilty, but itself. I deal with the details of *the trial* only.

Perhaps I may, without impropriety, here introduce the following quotation.

“ If the indictment be for killing with one sort of poison, and the evidence proves the killing with another, such evidence maintains the indictment, because the proof of the instrument wherewith the fact is done, is not absolutely necessary to the proof of the fact itself.”—“ The act of administering poison, and the act of stabbing, are plainly distinct actions in the actor; but the act of administering poison is the same, whether the party gave henbane or arsenic.” — *Law of Evidence*.

† In affixing the necessary references, I find myself at the head of the list; and as far as chronological distinction belongs to me, I have no hesitation in claiming it. *Principles of Forensic Medicine*, 1st ed. page 171, 2d edit. page 184, and Appendix XXI. Paris and Fonblanque, ii. 401. Beck, *Elements of Medical Jurisprudence*, ii. 422. As this book is not perhaps accessible, I shall extract that part of the notice more immediately to the present purpose, which he bestows upon the case, in the author’s own words.

“ It was and still is a prevailing opinion with many, that Sir T. B. was not poisoned, and that Capt. D. was innocent. Dr. Male notices this case as ‘ a melancholy and striking instance*,’ &c. Mr. Phillips, in his ‘ Theory of Presumptive Proof,’ adduces it as an instance where a man was unwarrantably condemned on *circumstantial evidence*†.

“ I cannot agree with either of these gentlemen, although I will readily allow that too much dependence was placed on the appearances

* Dr. Beck, in attributing these words to Dr. Male, has committed an oversight, for which it is easy to account. Dr. M.’s *Epitome* was reprinted along with the tract of Mr. Dease and two others, (with notes of a frivolous description,) by Dr. Cooper, of the United States—forming one volume, the paging of which is continued in a single series through the whole four distinct tracts. The passage, as the reader is already aware, belongs to Mr. Dease; and I have not thought it requisite to repeat it at full length, within so short a space.

† *Law of Evidence*.

trial most scrupulously ; I have treated it, I may say, both analytically and synthetically ; and cannot expunge the passage alluded to below.

found on dissection. Putrefaction was evidently too far advanced to render them a certain ground of testimony.

“ As a medical man, it might be inquired of Dr. Male, whether the symptoms preceding this death have not been MOST STRIKINGLY AND ASTONISHINGLY VERIFIED, as *probably* originating from laurel-water, by the subsequent investigations of chemists and physicians ? Mr. Hunter, in his testimony, says, that he had never known laurel-water to act so rapidly as the other medical witnesses described. He had injected it into the veins and into the stomach of animals, but *it never produced so quick an effect*. Who, I would ask Dr. M., have subsequent experiments proved to be right on this point, Mr. Hunter, or the other witnesses ? Let the facts I have adduced in previous pages, answer this question.

“ Again, Mr. Phillips and others object greatly, that the whole proof as to its being laurel-water rested upon the comparison of the smell. Now, I conceive this to be a very satisfactory circumstance. The medicine administered by Mr. Powell did not contain laurel-water — while few, very few indeed, of the fluids in common use, possess a smell at all resembling that of bitter almonds. This property is peculiar — confined to a certain number of vegetable products, several of which, even at that day, were known to be deleterious.

“ Capt. D. had a still in his own room — there were laurels and bays in the garden*. This is a sufficient answer to Mr. P.’s question— *where did the prisoner procure it ?* Certainly, if there was an intention on the part of Capt. D. to use the laurel-water for the purpose of poisoning, we have shewn *how he could obtain it*†.

“ I have made these few remarks on this case, not for the purpose of asserting positively that Sir T. B. was poisoned, but to state a few circumstances, which tend to shew that this was not an instance of *judicial murder*, for such, I apprehend, it must be considered by the critics on it.”

To this I subjoin a passage from a writer, to whom, I must maintain, that every medical jurist is bound to pay attention, although he neither claims notice as such, nor as a literary character ought so to be considered. In point of date, the remark is entitled to precedence over all those already quoted ; but I have, with natural partiality, attended to our own more formal claims first.

“ In the case of Donellan, the highest professional men in the

* See the testimony of Amos, the gardener.

† Note by Dr. Beck :—“ The fact of Captain Donellan’s having a still, is cautiously omitted in Mr. Phillips’s statement of the case. Nor is this a solitary instance of omission ; and in proof of this, I request any gentleman to compare the abstract I have given, (and which is taken almost verbatim from the trial,) with that presented by Mr. P. His comments on the medical testimony, are evidently founded on imperfect information concerning the subject in dispute.”

I avoid, of course, all attempts to estimate the force of the moral or circumstantial proofs, although I have not failed to scrutinize them as accurately as a *physician* may be able or at liberty to do; but they fall not within my province, even, perhaps, as aids and supports to that part of the evidence which does belong to the faculty.

Having, in the Second Part of the Appendix, given very copious extracts from the evidence, together with that of Mr. Hunter at large, I shall spare any allusions at present, beyond such as may be indispensable in an attempt to clear away some of the mist which that illustrious meteor contrived to cast around this particular case.

I have not entered upon this, nearly appalling, undertaking, unaware of the charge I may incur of temerity, if not of something worse; and of the probable consequences which those who swear by the name of HUNTER may stir themselves to inflict upon me. There are not wanting orators, both individual and congregated, who are proud to ingulf all personal and social distinction in that overwhelming appellation. A name thus rendered *perennius ære*, so slim an individual as myself could not possibly deface to the extent even of a superficial scratch, were he so inclined—which, in sober veracity, is the farthest thing from my thoughts. With those who may feel disposed to prate about illiberality, presumption, disturbing the fame of the departed, &c., I have to plead in vindication of an unaffected desire to maintain truth, should the cost even be chargeable to a great name, (which, by the way, can always better afford it than a small one,)—*first*, the claims of truth, which I have been taught to consider paramount to those of all names whatever; *secondly*, the notoriety of the slander that has so long been current against men as honest as John Hunter, probably, and against medical testimony at large; *thirdly*, the impossibility on my part, of having breathed a syllable on the subject during Mr. Hunter's career; and, *lastly*, a disposition to admire and commend the illustrious individual in question, as strong as should be indulged, in a mind somewhat impressed with a respect for philosophy, but by no means incapable of entertaining admiration for philosophers. To what has been quoted from the very judicious animadversions of Dr. Beck, I have very little to add concerning the precise statements of Mr. Hunter, agreeing as I do to the full extent of my cotemporary's views. Still I would

kingdom were examined on the analysis of the noxious infusion to which the death of the baronet was ascribed; and whatever judgment we are at liberty to form as to the merits of that case, and of the justice of the verdict, there can be but one opinion with respect to the *propriety of the proceedings*, which were conducted with the greatest care and caution.”—*Dr. Watkins* on the case of *Fenning*.

take the liberty to draw attention very particularly to a circumstance that has not, as far as I know, been pointed out.

Mr. Hunter states that he had a copy of the examination, (that taken by the coroner of course, and to which reference enough was made in cross-examining some of the crown witnesses* by the very gentleman who conducted Mr. Hunter's examination in chief) submitted to him in London: but the counsel for the prisoner immediately waives that matter, and hastens from a part of the affair rather awkward for his case. Whether, according the law of evidence, or practice of the court, it was irregular to found any cross questions upon the voluntary or inadvertent allusion of a witness, on a point which was not gone into, I cannot say — but Mr. H. let quite enough out to warrant surprise that he did not come down better prepared on the occasion; unless we are at liberty to refer to a general hint thrown out in the text †, and ask if his conduct may be considered in the light of a particular illustration? At what time he had this examination submitted to him does not appear; but the history of the case tells us that the inquest was held on the 12th September and continued till the 14th November: as the trial did not take place till the 30th March in the year following, a period elapsed in which all the experiments that could have been devised in the prisoner's favour might have been made. During more than six months, that the prisoner was in jail under the accusation, we learn from Mr. Hunter himself that nothing of the kind had been done.

It is impossible to imagine that the parties concerned in a case of such magnitude, and on behalf of a man of such consequence, could have remained either insensible as to what ought to be done, or idle in the accomplishment of it. It is impossible not to surmise that the case was stated to Mr. Hunter at an early period — and stated to him for some specific purpose, consonant with his known talents and pursuits. We are not at liberty, (setting aside the general impropriety of imputation,) for a reason that I shall presently assign, to suppose that Mr. Hunter *did* make experiments with a particular view to this case; and I am conscious that I place the matter in the light most favourable to his reputation, when I suppose that he went down to Warwick in a state of premeditated ignorance — if ignorance be a word at all allowable in reference to John Hunter. That he had a knowledge of the properties of laurel-water, he states himself. Knowing this, if we knew no more of him, is it possible again to

* The reader can judge of this for himself as to Dr. Rattray's cross-examination, by turning to the case below — Lady Boughton was also taken to task about her examination at the inquest — and both by Mr. Newnham; apparently the leading counsel for the prisoner.

† Suprà, page 132.

conceive that he could have two opinions concerning the ostensible merits of the case, and was not alive to the risk of going over the ground, (for the sake of the culprit,) that had been already, and with such consequences, traversed by the professional agents of public justice? He did the wisest thing he could for the cause in whose aid he was enlisted, provided there was a wish in his breast on behalf of the accused; and we may suppose that to have been the case, without the slightest impeachment of his integrity. There might have been friendship—there might have been a persuasion of Donellan's innocence—men as shrewd have declared this to be their belief.

I have not yet exhausted my observations on this most important topic; but as what remains is a close commentary on the evidence, as reported to have been given by Mr. Hunter, it will less distract the attention of the reader, if I place it in immediate contact with the questions and answers, as numbered in the subsequent portion of this Appendix.

There remains, therefore, but little to be added here; though what I have to subjoin is worthy of serious attention.

Since the event in question, there has been a tradition in the medical circles, that John Hunter afterwards publicly regretted his having gone to give evidence in so unprepared a state, as to the matter of experiments. Later investigations, and the subsequent accumulation of facts relating to this poison, will not permit the supposition, that whatever experiments he might have afterwards made could have favoured the interests of the prisoner. It is therefore impossible to place any regret that the illustrious individual in question could have expressed to any score, but that of his regard for truth, and his own reputation as a philosopher.

But we have the story now in print, on the most satisfactory authority, excepting that, for my own part, I should have been gratified had I been able to quote the eminent individual to whom I am indebted for it, through a reputable channel. That, however, I cannot help, as it is impossible to wait for that part of the authorised version of his lectures, which it is to be expected will contain the statement in a more suitable form. I fancy, however, that the authenticity of the passage will not be impeached, whatever may be the feeling of the profession as to the manner in which it has been allowed to get into print. "You should make up your minds," this professor is represented as saying to his pupils, "never to give an opinion as to the death of an individual being produced by a vegetable poison, unless you find that vegetable poison in the stomach, or some other strong proof be given that it was administered. No appearances after death, should induce you to take an oath that an individual has perished by a vegetable poison. I here mention, that Mr. Hunter himself used to lament that he had not taken the same precaution on the occasion of a trial which agitated the public mind very much forty years ago.

He regretted that he had not made more experiments on the subject of poisons, before giving an opinion in a court of justice. He found himself a good deal embarrassed on that occasion; the lawyers took advantage of his embarrassment*; and he used to express his regret publicly in his lectures, that he had not given more attention to the subject, before he ventured to give an opinion in a court of justice †.

Sectio Cadaveris.—p. 139.

Those who have witnessed the blunders (and who has not witnessed them?) that are often committed in the inspections for ordinary pathological purposes, and have been mortified by disappointments, in consequence of careless or awkward manipulation, will at once perceive how very much they would be embarrassed by a judiciary examination as to the import of appearances, occurring under circumstances of a similar nature, in a serious inquiry into the cause of death. The professional reader will at once recognise the truth of the statement, that there are few practical applications of the hand so susceptible of neat display as *dissecting*. I think it my duty, in this place, to bear testimony to the merits of a work which, were it more known, would do much good. I allude to a recent publication by the elder Chaussier, entitled “*Recueil de Mémoires, Consultations, et Rapports sur divers Objets de Médecine Légale*,” which has been particularly noticed in some of our journals. The prior part consists of most excellent and particular instructions for examining the various parts of the body in detail. These are so different from the general course practised in this country, that they demand more extensive circulation.

It is proper, however, to add, that the information conveyed by our medico-legal writers, though not, perhaps, identical with that furnished by this author, would, if duly attended to, go a great way towards guarding against such reprehensible lesions as are but too often committed, and have sometimes been confounded with those which it was the object to trace.

Preserving the Original Character of Notes.—p. 141.

This has reference to occasions where they are prepared under the sanction, and as the recorded observations and deductions, of more than one person. The necessity of using *original* notes, (not copies) has been sufficiently explained in the text. It may be pardonable if, in few words, I hint that they should, in such cases, be written fairly out, after the operative part of the business is finished, a copy being taken by each of the parties for himself;

* This is unintelligible. Mr. H. may have had cause for embarrassment, and his evidence betrays not a little; but the lawyers treated him with inexplicable forbearance.

† This lecture is reported to have been delivered in April, 1824.

or that, before they separate, transcripts should be made, and each set of the notes signed by all. I should think it impossible to impugn their admissibility in court, after such precautionary observances.

Importance of Conference among Medical Men Illustrated.—
p. 141.

The following is the case mentioned by Dr. Percival :—"Several years ago a trial of considerable consequence occurred, relative to a large copper work ; and two physicians of eminence were summoned to the assizes, to bear testimony concerning the salubrity or insalubrity of the smoke issuing from the furnaces. The evidence they offered was entirely contradictory. One grounded his testimony on *the general presumption*, that the ores of copper contain arsenic, and consequently, that the effluvia proceeding from the roasting of them must be poisonous, because arsenical. The other had made actual experiments on the ore employed in the works under prosecution, and on the vapours which it yielded. He was thus furnished with full proof that no arsenic was discoverable in either. But the affirmative prevailed over the negative testimony*, from the authority of the physician who delivered it ; an authority which would probably not have been misapplied, if he had been antecedently acquainted with the decisive trials made by his opponent †."

With much deference to Dr. Percival, but with a solicitude for the proper use of terms that peculiarly connects itself with these subjects, I cannot see that affirmative evidence prevailed here. The *affirmative* testimony was certainly on the part of the physician who made the experiments,—the other gave that which was *presumptive*.

Probably a more glaring elucidation of the folly of neglecting a previous comparison of ideas occurred in a case of Infanticide, tried not long ago, when a medical practitioner being summoned as a witness, caused a physician (who has paid considerable attention to Legal Medicine) to be subpoenaed, in full confidence that this gentleman's statements would but corroborate and give effect to his own. No previous conference took place, and the result was quite the reverse of what this unfortunate witness had reckoned on.

* The following passage must not be omitted :—"One affirmative witness countervails the proof of several negative, because the affirmative may swear true, and the negative also ; for the negatives may commonly be that they know not of the matter, the affirmative swears that it is, and so the affirmative may be true, and the negative also—for the thing that the one swears may be true, though the other knew nothing of the matter."—*Gilbert's Law of Evidence*.

† Medical Ethics.

Obstacles to Co-operation from Private Quarrels.—p. 142.

With respect to the matter of ordinary professional consultations, Dr. Gregory has the following observation:—“If a physician cannot lay his hand to his heart, and say that his mind is perfectly open to conviction, from whatever quarter it shall come, he should in honour decline the consultation*.” But it may not be in our power to decline meeting those who are obnoxious to us, under the circumstances in view. We may be compelled to perform this duty by the mandate of authority.

Pretending to know more than one's neighbours.—p. 144.

As regards myself, there can be no pretence for applying the supposition, in the text, beyond the immediate theme of the present volume. At the same time, I am ready to confess that I knew very little about Evidence, and less than many of that which may be designated Medical. Still it is difficult to turn one's attention somewhat closely to any subject, that has been little thought of, without experiencing somewhat greater interest, and perhaps deriving some particular advantage—equally attainable, however, by all who may choose to bestow similar pains. The observation that suggested this note is to be considered in the light of any thing but a boast, and was dictated by a feeling remote enough from overweening conceit.

The Author's Alliance with Forensic Medicine.—p. 146.

For several years I had entertained the hope that, by a sedulous cultivation of the literature, and an attentive application to the practical bearings of this science, I might qualify myself in some measure for aiding those whom it equally concerns to prepare for the difficulties and perplexities that ordinarily harass the medical witness. Under this impression, I have spent not only time and labour, but other things that men sometimes value above these, in the preparation; without seeing that there is a present prospect of success—even as to an opportunity of lending a helping hand. It is a slur, perhaps, on the profession—but it is the truth—that, had I proceeded to offer such a course of Lectures as alone I would pretend to offer, the signs of encouragement were greater from the juridical than from the medical quarter of those whom such a course of instruction might concern. For the gratification of my own mind, I shall not cease to express my views of topics that I have now acquired some means of investigating; but I apprehend that my labours must be confined hereafter to books—or to parallel modes of imparting any acquisitions I may persuade myself, from time to time, would be worthy of submission to the reading portion of the medical community.

Antiquity and Cultivation of Forensic Medicine.—p. 147.

I shall not venture to trespass further on the reader's forbear-

* Lecture II.

ance, than by referring him to the note above, headed "Authors defective," &c. It was regularly taught, almost before Chemistry had a name—at least in the sense now understood; and there are other sciences indispensable in medicine that were, perhaps, still less known, when this branch had attained considerable eminence.

To give Evidence, a desirable matter.—p. 151.

In too many cases, the practitioner goes forward much as a timid novice would into a battle; over-anxious about his own welfare, and thinking of nothing but himself—wishing it were over, and that he were well out of it; safe either at the side of his own fire, or at that of a patient's bed. No wonder that the interests of the science and the character of the profession suffer at such hands. But, at the same time, it must be acknowledged that there are not wanting rash and headstrong combatants, who throw away their prowess by a blind, impetuous, and premature activity; an activity over which a cool and skilful adversary, who reserves his strength for the period of their exhaustion, must infallibly triumph. The truth is, that nearly all the troops medicine sends into the field are uninstructed, and undisciplined; consequently, whether brave or timid, they are nearly alike inefficient. It might be, and it should be otherwise. It may be objected, or at least answered, that practice is the only thing that can give advantage here; and that as long as lawyers have more frequent occasions to exercise themselves in public courts than medical men, they must infallibly come best off, and that in proportion to the superior frequency of their opportunities.

Were this the fair view of the case, we might well despair of ever being in the least better situated than we are. Since we could by no means believe that superior attention to the matters in question will afford, or could be wished to afford, more scope for a display of our acquirements. But lawyers cannot be oftener employed in questioning medical witnesses, than these are in answering; and though it might appear that a habit of interrogating and teasing witnesses generally may give them advantages over any class in particular; yet were they more accustomed to encounter that sturdiness on the part of scientific witnesses, which due acquaintance with the relations of their particular science to the business in hand would impart, it would soon be found that the level would be much alike for both parties: and then the realization of the hope thrown out in the text might reasonably be looked for.

Teaching Public Medicine.—p. 152.

I have hinted above, that this *great* department is not to be taught incidentally, as holding detached relations to other branches of medical study. Under such *pretended* methods, the details must either be attempted without the great principles,

(a competent knowledge of which is the sheet anchor of all who aspire to any thing beyond the qualifications of a pointer of pins, or the artist who turns the cutler's wheel,) or these principles must be given imperfectly and inefficiently, because they cannot be illustrated. Such a scheme for teaching *Political Medicine** is a deception; and the teacher himself is not the least deceived.

Confining my observations strictly to *Forensic Medicine*, and putting entirely aside the stupendous interests of *Medical Police*, or the enactment of laws for the preservation of the public health, (a branch including certain questions of the most intense interest to a commercial people,) I should think that there can be occasion to do little more than name a few of the topics belonging to it, in order to shew satisfactorily the inadequacy of all such pretensions to teach it in this manner. At the same time, I should praise the attempt, were it dictated by the desire of exciting the student to avail himself of other and more adequate sources of information.

Let the candid inquirer take up any book on *Toxicology* — (Orfila's, for instance, as that with which we have at present most reason to be satisfied,) and after running his eye over the table of contents merely, reconcile, if he can, to his experience of a London course of *chemistry*, the practicability of doing any thing like justice to that *part* of *Forensic Medicine*. Far be it from me to deny, that much useful information may be, and even must be conveyed by a professor of chemistry, on the manipulations requisite for the detection of a few poisons. But are the circumstances under which he must of necessity display his experiments, those in which the medical jurist will be placed in actual occurrences, calling for judiciary investigation? And is not poisoning but one of various ways of committing homicide, to the clearing up of which several great principles are equally applicable, and certain important rules of conduct alike indispensable? But I will not quarrel with the chemist — as far as he goes, his instructions are sound and valuable enough. It is only to be lamented, that instead of toxicological lessons being given as part of a course of chemical instruction, the operations, founded on a knowledge of the latter science, required for the detection of some poisons, should not be a substantive part of a course of toxicology, physiological and pathological, as well as chemical — the whole forming but a portion of general and enlarged views of the destruction of life by unusual agency, and these again subject to the grand object of judiciary reference and responsibility.

There are others whom it is impossible to dismiss so easily —

* The term *Medical Jurisprudence* is commonly employed by those who profess to manage it in this way, for *Forensic Medicine* — but both are branches, and distinct branches, of a whole.

who seem to step out of their province altogether to do no small harm in this very matter. What the legal aspect of *death by poisons* can have to do with the practice of *surgery*, is, to my apprehension, not very apparent; and yet (if the contemplation of the probable consequences could be set aside) there is a curious and somewhat amusing specimen of modern lessons in this matter before the public. Participating, as I do most fully, in that commendable jealousy for the interests of legal medicine which has been well and often expressed of late*, I must bear myself out by a quotation which, if not a false report of what was actually said by the eminent professor whose words it pretends to convey, must make every one stare, who has but *dabbled* in toxicology. "With respect to the means which should be employed with a view of removing the oxymuriate of mercury from the stomach, I will tell you what I believe to be the best remedy to resort to at the moment, for it will often happen that you cannot obtain the best chemical preparations for that purpose. It is well known, that the carbonate of potass or soda decomposes this substance. What I should advise you to do, therefore, would be to mix a quantity of soap with warm water, and, making it as thick a lather as you can, give it in large quantities to the patient. I have myself tried this remedy, and my patient recovered, whether *post hoc* or *propter hoc* I will not decide, but *my belief is, that I could not have administered a better remedy* than that which suggested itself to me on the sudden, if I had been in Apothecaries' Hall†." All this, and much more, is unaccompanied with any account, either of books, or other information on the subject of poisons! If such be a true representation of the matter, it will be easy perhaps to account, in one's own mind,

* Consult, *passim*, the medical journals generally; but more especially that of Edinburgh, which contains not only many valuable articles connected with the details of public medicine, but much admirable matter, which sanctions the sentiments that it has been my endeavour to record here, and elsewhere. Nor have these views been confined to professional publications.

† "Alkaline salts and earths," says the most unexceptionable authority of the day, "ought to act in the stomach by decomposing the corrosive sublimate, and by setting at liberty the oxide of mercury at maximum; consequently, if this oxide be a poison, these alkalies will be of no kind of use." Some experiments with *carbonate of potash and soda* are then quoted; after which it is added—"we must conclude that the alkalies cannot be the antidotes of sublimate, since the yellow oxide of mercury, in a very small dose, acts as a poison—" *Orfila*, i. 75, 76.

Orfila may be wrong, and the patient above-mentioned may have been cured by soap made into *the thickest possible lather*. But not to dwell upon this—it is very strange that the learned professor should have omitted all mention of vegetable gluten, and even of albumen, as antidotes to this poison.

for some of those strange statements that have come to light in the assize reports, and of which an exemplification or two will appear further on. What can the Orfilas, the Chaussiers, the Magendies, and others, think of us, when they peruse these our great school gazettes? Well may they parody the words of their illustrious countryman and say — *C'est ainsi que l'on enseigne la Toxicologie à Londres!*

I might have extended these strictures to another class of teachers, viz. those who labour in the obstetric department; but I believe they do not go much into those questions of Forensic import that more intimately connect themselves with their professed business. As far as I have any knowledge of their ideas of a course of midwifery, the knotty points of Infanticide are treated as rubbish both by them and their pupils*. In this I am upon the whole disposed rather to commend than censure them — for it is one of the topics on which a little knowledge might be a dangerous thing.

All teachers might do their pupils most essential service, if they took this notice of the Forensic bearings of their particular and proper themes — viz. that such exist, and that they may be of the last importance; at the same time directing to the most approved sources of information. Those who are under forty years of age may, perhaps, think of this matter.

* By which I mean, that they are cleared out of the way with all possible despatch.

A P P E N D I X,

PART II.

CONSISTING OF

MEDICAL DEPOSITIONS AND EXAMINATIONS,

WITH AN

OCCASIONAL COMMENTARY,

AND

NOTES CORRECTIONAL AND EXPLANATORY.

NOTE.—The topics illustrated by the ensuing details, are arranged in the order of the “Principles of Forensic Medicine,” though every subject there treated of is by no means attempted to be introduced. Where several cases relate to one head, (as, for example, Poisoning by Arsenic,) they are inserted chronologically.

APPENDIX,

PART II.

I SHALL make no apology for prefixing the following passage, from a publication, it may be said, of an occasional nature, the facts alleged in which, however, cannot but excite most serious attention on the part of every jurist, whether medical or not. The observations themselves are undeniably just, and form an appropriate preface to a mass of professional evidence, such as that which immediately follows.

“Of all evidence in courts of criminal jurisprudence, that of professional men ought to be given with the greatest care, and received with the utmost caution. Plain facts are level to ordinary understandings, and very simple logic is sufficient to ascertain their relative connexions, and separate value; but opinions drawn from recondite branches of human knowledge, and grounded on inquiries with which few comparatively are acquainted, must be regarded as of little weight, unless well strengthened by reasoning that admits of no misconstruction, and supported by authority that cannot be controverted. It is, however, to be feared, that in too many cases of vital importance, a reliance has been placed upon the judgment of professional men, which has contributed to verdicts and decrees that have proved woeful warnings to succeeding jurors and judges. Instances might be produced, in no slight number, where a culpable confidence in medical practitioners has proved fatal to persons, of whose innocence an enlightened posterity can have no doubt. Our own records exhibit some melancholy cases wherein the fallible opinions of vain and ignorant men have been rashly thrown into the scale of justice, like the sword of the barbarian, to decide the fate of the unfortunate. Evidence and judgment of this kind may, indeed, be truly termed barbarous, since in every case where the balance hangs in equipoise, and doubt hovers on the beam, no man possessed of the common feelings of humanity, would endeavour to draw upon his imagination or his science, to supply the lack of direct and positive information. A man of extensive knowledge will deliver his testimony to *facts* in very plain and explicit terms; but when called upon for his *opinion*, in a matter where that opinion is certain of having considerable influence on the fate of others, he will be extremely tender, slow, and circumspect *.”

* Pamphlet by J. Watkins, LL.D. in the case of Fenning.

DEATH BY POISON.—ARSENIC.

Case of MARY BLANDY, tried at Oxford for the Murder of her Father, 1752.*

Dr. Anthony Addington sworn. Counsel—Did you, *Dr. Addington*, attend *Mr. Blandy* in his last illness? Yes, Sir.—When was you called to him the first time? On Saturday evening, August the 10th.—In what condition did you find him? He was in bed, and told me, that after drinking some gruel on Monday night, August the 5th, he had perceived an extraordinary grittiness in his mouth, attended with a very painful burning and pricking in his tongue, throat, stomach, and bowels, and with sickness and gripings; which symptoms had been relieved by fits of vomiting and purging.—Were those fits owing to any physic he had taken, or to the gruel? Not to any physic; they came on very soon after drinking the gruel.—Had he taken no physic that day? No.—Did he make any further complaints? He said that, after drinking more gruel on Tuesday night, August the 6th, he had felt the grittiness in his mouth again, and that the burning and pricking in his tongue, throat, stomach, and bowels, had returned with double violence, and been aggravated by a prodigious swelling of his belly, and exquisite pains and prickings in every external as well as internal part of his body; which prickings he compared to an infinite number of needles darting into him all at once.—How soon after drinking the gruel? Almost immediately. He told me likewise that, at the same time, he had had cold sweats, hiccup, extreme restlessness, and anxiety; but that then, viz. on Saturday night, August the 10th, having had a great many stools, and some bloody ones, he was pretty easy every where, except in his mouth, lips, nose, eyes, and fundament; and except some transient gripings in his bowels. I asked him to what he imputed those uneasy sensations in his mouth, lips, nose, and eyes? He said, to the fumes of something that he had taken in his gruel on Monday night, August the 5th, and Tuesday night, August the 6th. On inspection, I found his tongue swelled, and his throat slightly inflamed and excoriated. His lips, especially the upper one, were dry and rough, and had angry pimples on them. The inside of his nostrils was in the same condition. His eyes were a little bloodshot. Besides these appearances, I observed that he had a low, trembling, intermitting pulse; a difficult, unequal respiration; a yellowish complexion; a difficulty in the utterance of his words, and an inability of swallowing even a tea-spoonful of the thinnest liquor at a time†.

As I suspected that these appearances and symptoms were the effect of poison, I asked Miss Blandy whether *Mr. Blandy* had lately given offence to either of his servants, or clients, or any other person? She answered, that he was at peace with all the world, and that all the world was at peace with him. I then asked her whether he had ever been subject to complaints of this kind before? She said, that he had often been subject to the cholic and heartburn, and that she supposed

* State Trials.

† Compare this history with that of *Poisoning by Arsenic*, as regards symptoms, in *Orfila*—and in the *Principles*, under the proper head.

this was only a fit of that sort, and would soon go off, as usual. I told Mr. Blandy that I asked these questions, because I supposed that by some means or other he had taken poison. He replied, it might be so, or in words to that effect; but Miss Blandy said it was impossible. On Sunday morning, August the 10th, he seemed much relieved; his pulse, breath, complexion, and power of swallowing, were greatly mended. He had had several stools in the night, without any blood in them. The complaints which he had made of his mouth, lips, nose, and eyes, were lessened; but he said the pain in his fundament continued, and that he still felt some pinching in his bowels. On viewing his fundament, I found it almost surrounded with gleet^y excoriations and ulcers. About eight o'clock I took my leave of him; but before I quitted his room, *Miss Blandy* desired I would visit him again the next day. When I got down stairs, one of the maids put a paper into my hands, which she said Miss Blandy had thrown into the kitchen fire. Several holes were burnt in the paper, but not a letter of the superscription was effaced. The superscription was, *the powder to clean the pebbles with*. — What is the maid's name that gave you that paper? I cannot recollect which of the maids it was that gave it me. I opened the paper very carefully, and found in it a whitish powder, like white arsenic in taste*, but slightly discoloured by a little burnt paper mixed with it. I cannot swear this powder was arsenic, or any other poison, because the quantity was too small to make any experiment with, that could be depended on.—What do you really suspect it to be? I really suspect it to be white arsenic. —Please to proceed, Sir? As soon as the maid had left me, *Mr. Norton*, the apothecary, produced a powder, that he said had been found at the bottom of that mess of gruel, which, as was supposed, had poisoned *Mr. Blandy*: he gave me some of this powder, and I examined it at my leisure, and believe it to be white arsenic. On Monday morning, August the 12th, I found *Mr. Blandy* much worse than I had left him the day before. His complexion was very bad, his pulse intermitted, and he breathed and swallowed with great difficulty. He complained more of his fundament than he had done before: his bowels were still in pain. I now desired that another physician might be called in, as I apprehended *Mr. Blandy* to be in the utmost danger, and this affair might come before a court of judicature. *Dr. Lewis* was then sent for to Oxford. I staid with *Mr. Blandy* all this day. I asked him more than once, whether he really thought he had taken poison? He answered each time, that he believed he had. I asked whether he thought he had taken poison often? He answered in the affirmative. His reasons for thinking so were, because some of his teeth had decayed much faster than was natural; and because he had frequently, for some months past, especially after his daughter had received a present of Scotch pebbles from *Mr. Cranstoun*†, been affected with very violent

* See note below, page 202.

† In order to explain this allusion, and several others that might excite curiosity in the reader unacquainted with the history of this strange case, it may be proper to state the following circumstances, as laid in the speech of the counsel for the crown, (*Bathurst*, afterwards chancellor.) *Cranstoun* (a Scotch officer) got acquainted with the prisoner at *Henley*, her place of residence, while recruiting there, and understanding she was to have £10,000. obtained her consent to marry him. The father had a bad opinion of him, and also some idea of the

and unaccountable prickings and heats in his tongue and throat, and with almost intolerable burnings, and pains in his stomach and bowels, which used to go off in vomitings and purgings. I asked whom he suspected to be the giver of the poison? The tears stood in his eyes; yet he forced a smile, and said, a poor love-sick girl, I forgive her, I always thought there was mischief in those cursed Scotch pebbles.

Dr. Lewis came about eight o'clock in the evening. Before he came *Mr. Blandy's* complexion, pulse, breath, and faculty of swallowing, were got much better again; but he complained more of pain in his fundament. This evening *Miss Blandy* was confined to her chamber; a guard was placed over her, and her keys, papers, and all instruments wherewith she could hurt either herself or any other person, were taken from her.—How came that? I proposed it to *Dr. Lewis*, and we both thought it proper, because we had reason to suspect her as the author of *Mr. Blandy's* illness; and because this suspicion was not yet publicly known, and therefore no magistrate had taken any notice of it.—Please to go on, *Dr. Addington*, with your account of *Mr. Blandy*? On Tuesday morning, August the 13th, we found him worse again. His countenance, pulse, breath, and power of swallowing, were extremely bad. He was excessively weak. His hands trembled. Both they and his face were cold and clammy. The pain was entirely gone from his bowels, but not from his fundament. He was now and then a little delirious. He had frequently a short cough, and a very extraordinary elevation of his chest, in fetching his breath; on which occasions an ulcerous matter generally issued from his fundament. Yet, in his sensible intervals, he was cheerful and jocose: he said he was like a person bit by a mad dog, for that he should be glad to drink, but could not swallow. About noon this day, his speech faltered more and more; he was sometimes very restless, at others very sleepy; his face was quite ghastly. This night was a terrible one. On Wednesday morning, August the 14th, he recovered his senses for an hour or more; he told me he would make his will in two or three days, but he soon grew delirious again, and sinking every moment, died about two o'clock in the afternoon.—Upon the whole, did you then think, from the symptoms you have described, and the observations you have made, that *Mr. Blandy* died by poison? Indeed I did.—And is it your present opinion? It is, and I have never had the least occasion to alter it. His case was so particular, that he had not a symptom of any consequence, but what other persons have had, who have taken white arsenic; and after death, had no* appearance in his body, but what other persons have had, who have been destroyed by white arsenic:—When was his body opened? On Thursday, in the afternoon, August the 15th.—What appeared on opening it? I committed the appearances to writing, and should be glad to read them, if the court will give me leave. (Then the doctor, on leave given by the court, read as follows:) *Mr. Blandy's* back, and the hinder part of his arms, thighs, and legs, were livid.

truth that he was a married man at the time. Of course he opposed the matter; and *Cranstoun*, pretending to the second sight, and working on the daughter by other superstitious practices—she, at the same time, being nothing averse to lend her aid—forwarded to her various parcels of a powder, with instructions how to administer it.

* “The Doctor intended to have excepted the stone found in *Mr. Blandy's* gall-bladder.”

That fat which lay on the muscles of his belly, was of a loose texture, inclining to a state of fluidity. The muscles of his belly were very pale and flaccid. The cawl was yellower than is natural; and on the side next the stomach and intestines looked brownish. The heart was variegated with purple spots. There was no water in the pericardium. The lungs resembled bladders half filled with air, and blotted in some places with pale, but in most with black ink. The liver and spleen were much discoloured; the former looked as if it had been boiled, but that part of it which covered the stomach was particularly dark. A stone was found in the gall-bladder. The bile was very fluid, and of a dirty yellow colour, inclining to red. The kidneys were all over stained with livid spots. The stomach and bowels were inflated, and appeared, before any incision was made into them, as if they had been pinched, and extravasated blood had stagnated between their membranes. They contained nothing, as far as we examined, but a slimy bloody froth. Their coats were remarkably smooth, thin, and flabby. The wrinkles of the stomach were totally obliterated.

The internal coat of the stomach and duodenum, especially about the orifice of the former, was prodigiously inflamed and excoriated. The redness of the white of the eye in a violent inflammation of that part, or rather, the white of the eye just brushed and bleeding with the beards of barley, may serve to give some idea how this coat had been wounded. There was no scirrhus in any gland of the abdomen; no adhesion of the lungs to the pleura; nor, indeed, the least trace of a natural decay in any part whatever*.

(Counsel to *Dr. Lewis*.)—Did you, *Dr. Lewis*, observe that *Mr. Blandy* had the symptoms which *Dr. Addington* had mentioned? I did.—Did you observe that there were the same appearances on opening his body, which *Dr. Addington* has described? I observed and remember them all, except the spots on his heart.—Is it your real opinion, that those symptoms and those appearances were owing to poison? Yes.—And that he died of poison? Absolutely.

Dr. Addington cross-examined. (By prisoner's counsel.)—Did you first intimate to *Mr. Blandy*, or he to you, that he had been poisoned? He first intimated it to me.—Did you ask him whether he was certain that he had been poisoned by the gruel that he took on Monday night, August the 5th, and on Tuesday night, August the 6th? I do not recollect that I did.—Are you sure that he said he was disordered after drinking the gruel on Monday night, the 5th of August? Yes.—Did you ever ask him why he drank more gruel on Tuesday night, August the 6th? I believe I did not.—When did you make experiments on the powder delivered to you by *Mr. Norton*? I made some the next day; but many more some time afterwards.—How long afterwards? I cannot justly say; it might be a month or more.—How often had you powder given you? Twice.—Did you make experiments with both parcels? Yes; but I gave the greatest part of the first to *Mr. King*, an experienced chemist in Reading, and desired that he would examine it; which he did, and he told me that it was white arsenic. The second parcel was used in trials made by myself.—Who had the second parcel in keeping till you tried it? I had it, and kept it either in my pocket, or under lock and key.—Did you never shew it to any body? Yes, to several persons; but trusted

* Compare, as directed above.

nobody with it out of my sight*.—Why do you believe it to be white arsenic? For the following reasons: 1st. This powder has a milky whiteness, so has white arsenic: 2d. This is gritty and almost insipid, so is white arsenic†: 3d. Part of it swims on the surface of cold water, like a pale sulphureous film; but the greatest part sinks to the bottom, and remains there undissolved; the same is true of white arsenic: 4th. This thrown on red-hot iron does not flame, but rises entirely in thick white fumes, which have the stench of garlick, and cover cold iron held just over them, with white flowers; white arsenic does the same: 5th. I boiled ten grains of this powder in four ounces of clean water, and then, passing the decoction through a filtre, divided it into five equal parts, which were put into as many glasses. Into one glass I poured a few drops of sal ammoniac, into another some of the lixivium of tartar, into the third some strong spirit of vitriol, into the fourth some spirit of salt, and into the last some syrup of violets. The spirit of sal ammoniac threw down a few particles of pale sediment; the lixivium of tartar gave a white cloud, which hung a little above the middle of the glass; the spirits of vitriol and salt made a considerable præcipitation of a lightish-coloured substance; which, in the former, hardened into glittering crystals, sticking to the sides and bottom of the glass; syrup of violets produced a beautiful pale-green tincture. Having washed the saucepan, funnel, and glasses used in the foregoing experiments very clean, and provided a fresh filtre, I boiled ten grains of white arsenic, bought of *Mr. Wilcock*, druggist in Reading, in four ounces of clean water; and, filtering and dividing it into five equal parts, produced with them just as I had done with the former decoction. There was an exact similitude between the experiments made on the two decoctions: they corresponded so nicely in each trial, that I declare that I never saw any two things in nature more alike, than the decoction made with the powder found in *Mr. Blandy's* gruel, and that made with white arsenic. From these experiments, and others which I am ready to produce if desired, I believe that powder to be white arsenic‡.—Did any person make these experiments with you?

* See Principles, page 95.

† A very inconclusive reason, and at variance with the witness's own statement, in page 199; besides which, the taste of white arsenic is "acrid and corrosive."—*Orfila*.

‡ "To those," says *Dr. Paris*, "in the least acquainted with the habitudes of arsenious acid, it must be evident that no one of the appearances described by *Dr. Addington* indicates the presence of arsenic; and his evidence is only to be reconciled upon the supposition that, instead of the arsenic itself, he, in this case, detected the foreign substances with which it had been adulterated: thus, it has been before stated, that *white arsenic*, as sold by the druggists; is often adulterated with *sulphate of lime*; and the decomposition of this substance by the *subcarbonate of ammonia*, ('spirit of sal ammoniac,') or by the *subcarbonate of potass*, ('lixivium of tartar,') would occasion the præcipitation of a white substance, as stated in the evidence: it is, however, difficult to account for the 'considerable præcipitation of a lightish-coloured substance,' by muriatic acid, ('spirit of salt,') by the presence of any impurity likely to be contained in the arsenic, or in the water employed for its solution. If any lime were present, it would probably give 'white glittering crystals' of sulphate of lime, by the

No; but *Mr. Wilcock*, the druggist, was present while I made them: and he weighed both the powder and the white arsenic. — When did *Mr. Blandy* first take medicines by your order? As soon as he could swallow, on Saturday night, August the 10th; before that time he was under the care of *Mr. Norton*.

— Do you, *Dr. Addington*, remember *Miss Blandy's* telling you on Monday night, August the 12th, that she had on a Sunday morning, about six weeks before, when her father was absent from the parlour, mixed a powder with his tea; and that *Susan Gunnell* had drank that tea? I remember her telling me that Monday night, that she had on a Sunday morning, about six weeks before, when her father was absent from the parlour, mixed a powder with his tea; but do not remember her saying, that *Susan Gunnell* had drank that tea. I have several times heard *Susan Gunnell* say, that she was sure she had been poisoned by drinking tea out of *Mr. Blandy's* cup that Sunday morning. — Did not *Miss Blandy* declare to you, that she had always thought the powder innocent? Yes. — Did she not always declare the same? Yes. — (The King's counsel then interposed, and said, that he had not intended to mention what had passed in discourse between the prisoner and *Dr. Addington*; but that now, as her own counsel had been pleased to call for part of it, he desired the whole might be laid before the court.) — *Dr. Addington*. On Monday night, August the 12th, after *Miss Blandy* had been secured, and her papers, keys, &c. taken from her, she threw herself on the bed, and groaned; then raised herself, and wrung her hands, and said, that it was impossible for any words to describe the horrors and agonies in her breast; that *Mr. Cranstoun* had ruined her; that she had ever, till now, believed him a man of the strictest honour; that she had mixed a powder with the gruel which her father had drank on the foregoing Monday and Tuesday nights; that she was the cause of his death, and that she desired life for no end, but to go through a painful penance for her sin. She protested, at the same time, that she had never mixed the powder with any thing else that he had swallowed; and that she did not know it to be poison, till she had seen its effects. She said that she had received the powder from *Mr. Cranstoun*, with a present of Scotch pebbles; that he had wrote on the paper that held it, 'the powder to clean the pebbles with;' that he had assured her it was harmless; and that he had often taken it himself; that if she would give her father some of it now and then, a little and a little at a time, in any liquid, it would make him kind to him and her; that accordingly, about six weeks before, at breakfast-time, her father being out of the room, she had put a little of it into his cup of tea, but that he never drank it; that part of the powder swimming at the top of the tea, and part of it sinking to the bottom, she had poured it out of the window, and filled up the cup with fresh tea; that then she wrote to *Mr. Cranstoun*, to let him know, that she could not give it in tea without being discovered; and that, in his answer, he had advised her to give it in water-gruel for the future, or in any other thickish fluid. I asked her whether she would endeavour to bring *Mr. Cranstoun* to justice? After a short pause, she answered, that she was fully conscious of her

addition of sulphuric acid (*spirits of vitriol*).—” *Medical Jurisprudence*, ii. 249.

own guilt, and was unwilling to add guilt to guilt; which she thought she should do, if she took any step to the prejudice of *Mr. Cranstoun*, whom she considered as her husband, though the ceremony had not passed between them.—Was any thing more said by the prisoner or you? I asked her, whether she had been so weak as to believe the powder, that she had put into her father's tea and gruel, so harmless as *Mr. Cranstoun* had represented it? Why *Mr. Cranstoun* had called it a powder to clean pebbles, if it was intended only to make *Mr. Blandy* kind? Why she had not tried it on herself, before she ventured to try it on her father? Why she had flung it into the fire? Why, if she really thought it innocent, she had been fearful of a discovery, when part of it swam on the top of the tea? Why, when she had found it hurtful to her father, she had neglected, so many days, to call proper assistance to him? And why, when I was called at last, she had endeavoured to keep me in the dark, and hide the true cause of his illness?—What answers did she make to these questions? I cannot justly say; but very well remember, that they were not such as gave me any satisfaction.—(By prisoner's counsel.)—She said then, that she was entirely ignorant of the effects of the powder? She said, that she did not know it to be poison, till she had seen its effects.—Let me ask you, *Dr. Addington*, this single question: whether the horrors and agonies which *Miss Blandy* was in at this time, were not, in your opinion, owing solely to an hearty concern for her father? I beg, Sir, that you will excuse my giving an answer to this question. It is not easy, you know, to form a true judgment of the heart; and I hope a witness need not deliver his opinion of it.—I do not speak of the heart: you are only desired to say, whether those agitations of body and mind, which *Miss Blandy* shewed at this time, did not seem to you to arise entirely from a tender concern for her father? Since you oblige me, Sir, to speak to this particular, I must say, that all the agitations of body and mind which *Miss Blandy* shewed at this time, or any other when I was with her, seemed to me more to arise from the apprehension of unhappy consequences to herself, than from a tender and hearty concern for her father.—Did you never then observe in her any evident tokens of grief for her father? I never thought I did*.—Did she never wish for his recovery? Often.—Did not you think that those wishes implied a concern for him? I did not; because I had before told her, that if he died soon, she would be inevitably ruined.—When did you tell her this? On Sunday morning, August the 11th, just before I left Henley.—Did not she desire you that morning, before you quitted his room, to visit him again the next day? Yes.—And was she not solicitous that you should do him all the service in your power? I cannot say that I discovered any solicitude in her on this score till Monday night, August the 12th, after she was confined, and her keys, and other things, had been taken from her.—(By King's counsel.)—Did you, *Dr. Addington*, attend *Susan Gunnel* in her illness? Yes, Sir; but I took no minutes of her case.—Did her symptoms agree with *Mr. Blandy's*? They differed from his in some respects; but the most material were manifestly of the same kind with his, though in a

* This seems to have been a very strange course of examination, and one that I should think would not have been allowed on the part of the counsel for the prosecution.

much less degree.—Did you think them owing to poison? Yes.—Did you attend *Ann Emmet*? Yes, Sir.—To what cause did you ascribe her disorder? To poison: for she told me that on Wednesday morning, August the 7th, very soon after drinking some gruel at *Mr. Blandy's*, she had been seized with prickings and burnings in her tongue, throat, and stomach, which had been followed by severe fits of vomiting and purging: and I observed that she had many other symptoms, which agreed with *Mr. Blandy's*.—Did she say, that she thought she had ever taken poison before? On my telling her that I ascribed her complaints to poison, which she had taken in gruel at *Mr. Blandy's*, August the 7th, she said, that if she had been poisoned by drinking that gruel at *Mr. Blandy's*, she was sure that she had been poisoned there the hay-time before, by drinking something else*.

Case of KATHERINE NAIRN and PATRICK OGILVIE, tried for Incest and Murder, at Edinburgh, August, 1765†.

For the prosecution —

James Carnegie, surgeon in *Brechin*, married, aged about forty and upwards, being solemnly sworn, purged of malice and partial counsel, depones, That in the end of May last, he got a message from *Lieut. Ogilvie* the panel‡, with whom he is acquainted, desiring him to meet him at *Colin Smith's*, vintner in *Brechin*; that the deponent having gone there, found him in company with one *Lieut. Campbell* of the same regiment, and one *Mr. Dickson*; that *Lieut. O.* took the deponent aside, and told him he was troubled with gripes, and wanted to buy some laudanum from him, and at the same time told him he wanted to buy some arsenic, in order to destroy some dogs that spoiled the game: that the deponent told him, he was uncertain whether he could furnish him with these things or not, but that he should look when he went home: that the deponent, when he went home, found that he had some of both, and put up a small glass phial of laudanum, and betwixt half an ounce and an ounce of arsenic, both which he delivered next day to the lieutenant, after the deponent had dined with him and *Lieut. C.* in *Smith's*: that *Lieut. O.* took the deponent into another room away from *Lieut. C.* when he was to receive the laudanum and arsenic, and there the deponent delivered them to him: that the price of both was a shilling: that the arsenic was pulverized, and *Lieut. O.* having asked how to prepare it, the deponent gave him directions. Depones, that he sold some of the same arsenic formerly to people for poisoning of rats, and heard that it had the desired effect. Depones, that he has been accustomed, when he sold arsenic, to take receipts from low people who bought it, but never from gentlemen; and as the deponent knew *Lieut. O.*, and had a good

* That *Mr. Blandy* was poisoned, and that the poison was administered by his daughter, there is no reason to doubt. She expiated her crime on the scaffold; and, notwithstanding a host of calumnious reports, died in a manner suitable to her unhappy circumstances—declaring to the last, however, that she neither knew nor believed that the powder to which her father's death was ascribed, was of a noxious nature.

† State Trials.

‡ Prisoner.

opinion of him, the deponent did not ask a receipt from him, although, when the lieutenant spoke about it first, the deponent said to him, *we use to take a receipt for arsenic*: that the lieutenant answered, *see first if you have it*; adding, at the same time, *very good*. Depones, that he got his arsenic from a druggist in *Dundee*; but how long ago he cannot say, there being a small demand for arsenic at any time. *Causa scientiæ patet**. And all this is truth, as he shall answer to God.

Depones, that he wrapt it up in the form of a pennyworth of snuff, under three covers. Depones, that the arsenic which he sold as above, was white arsenic: depones, that he cannot take upon him to say, from looking at arsenic, whether it be arsenic or not; nor can he say from the taste, for he never tasted it; but that he bought this as arsenic, had the name marked upon it upon the package, and heard from those he sold it to that it had killed rats, as above-mentioned. Depones, upon a further interrogatory, that he heard of *Mr. Ogilvie of East Miln's* death, after the time that he sold the arsenic to the lieutenant.

There are four medical depositions, of which I shall insert but one, as they are little more than echoes of each other.

Doctor John Ogilvie, physician in *Forfar*, aged forty-eight years, married, being solemnly sworn, purged of malice and partial counsel, and interrogated, depones — that he heard that the late *East Miln*† died upon the 6th of June last; and that a few days after that, the deponent was desired by the Sheriff Substitute of *Forfarshire* to go to *East Miln* to inspect the corpse of the defunct: that the deponent forthwith obeyed the order, and arrived at *East Miln* upon the 12th of June last, about noon: that upon his arrival, *Alex. Ogilvie*, the defunct's brother, desired the deponent to go and inspect the corpse, which was then lying in an out-house: that he found the corpse in its grave-clothes, and in a coffin; and having inspected the body, he observed that the face, the arms, and several other parts of the body, were black and livid, and that the nails were remarkably black; and as to the tongue, it was locked fast by the jaws, so that he could only observe a small part of it, which part, being the tip of the tongue, he observed to be white and rough, and of a very unusual appearance: that the breast was white, and the lips pretty much of a natural colour: that from the appearances above described, he could draw no conclusion as to the cause of the defunct's death; as almost all these appearances might have arisen from the putrid state the body was then in; and that the only thing that appeared extraordinary to him, was the appearance of the tongue above described: that the deponent had some inclination to have opened the body, and if the two surgeons whom he heard had left *East Miln* that morning, had been there, he believes he might have done so; but as they were gone, and as the

* This is a usual clause in Scottish depositions.

† In Scotland it is customary to denominate the landed proprietor, or *laird*, by the name of the family estate — the deceased was *Mr. Ogilvie, of East Miln*. The custom is similar to that observed in France towards seigneurs, who are commonly called by the name of their property.

deponent, in his own opinion, thought the body too much putrified to be opened with safety to the operator; and as he was likewise of opinion, that, in such a state of putrefaction, no certain signs could have been discovered of the cause of the death by opening the body, the deponent declined to do it. Depones, that the appearance of the tongue, before described, was not such as happens in common deaths, but such as occurs from convulsions, or other strong causes. Depones, that *Lieut. O.*, the panel, neither desired nor forbid the deponent to inspect the corpse; but he was present with the deponent when he inspected it as aforesaid.

FOR THE PRISONERS.

Dr. James Scott, physician in *Edinburgh*, married, aged about forty, being solemnly sworn, purged of malice and partial counsel, examined and interrogated, depones—that he has made sundry experiments upon arsenic: that he knows it will not dissolve in warm water; and that the common arsenic that is to be met with in the shops, although pretty finely powdered, falls to the bottom of a vessel with water almost instantaneously*: that it never puts on a greasy appearance. But, being further interrogated upon the part of the prosecutor, depones, that if arsenic be put into a bowl of tea, with milk and sugar, that if it was stirred round, the arsenic would be suspended so long, that it would kill a person that had drunk it; and if there was honey in the bowl, the arsenic would be still more suspended thereby†.

Case of ELIZABETH FENNING, tried at the Old Bailey, April 11th, 1815, for administering Poison with intent to Kill and Murder†.

It is necessary to premise—that the prisoner was charged with having mixed arsenic with yeast dumplings. The first witness (her mistress) described the dough as not rising when

* This evidence is worthy of consideration. We are too much addicted, even now, to talk of arsenic as if it were soluble with the same readiness as sugar.

† This was altogether a strange affair. The prisoners were brother and sister-in-law—the female being wife of the deceased, who was brother to the male prisoner. The limits of this article will not admit of comment upon the merits of the case—suffice it to say, that besides the complication, (strange to an English mind,) of trying two persons on one indictment, in which two distinct crimes are charged, the evidence as to poisoning was of the vaguest nature. Both were found guilty upon each charge. *Ogilvie* was executed; *Mrs. O.* having pleaded pregnancy, was delivered of a daughter in the “Heart of Mid Lothian,” and soon afterwards found means to escape.

‡ From a pamphlet, entitled “Important Results of an Elaborate Investigation into the Mysterious Case of Elizabeth Fenning, &c. by John Watkins, LL.D.” In this publication the report is stated to be much more minute than those published elsewhere.

The editor, or author, styles the affair “one of the most extraordinary cases that ever happened in a civilised state.”—*Preface.*

placed before the fire for that purpose; that its shape was singular, and that this shape was retained till the last. When the dumplings had been boiled, and were brought to the table, the witness observed that they were black and heavy, and, soon after eating part of one of them, she was seized with illness; and her father and husband, who likewise partook of them, also sickened.

Mr. Orlibar Turner deposed, that he had been taken ill after partaking of the dumplings in question: that, entertaining suspicions of arsenic, he next morning made a search: that he added water to the remains of the dumplings in the pan in which the dough had been mixed, and that after stirring the whole together, and setting down the pan for half a minute, he discovered a white powder at the bottom of it, which he locked up till *Mr. Marshall*, the apothecary, came: that arsenic had been kept in a drawer in the office, in two wrappers tied round, and "Arsenic, deadly poison," written on it: that the prisoner could read and write very well: that the drawer had always remained open, and that any person might have access to it: that he had kept two of the knives with which the dumplings had been cut, and that *he had observed them black the next day*: the arsenic he subsequently stated to have been kept for the purpose of destroying mice.

Mr. John Marshall sworn.—I am a surgeon. On the evening of Tuesday, the 21st of March, I was sent for to *Mr. Turner's* family: I got there about a quarter before nine: all the symptoms attending the family were produced by arsenic: *I have no doubt of it, by the symptoms*: the prisoner was also ill, by the same, I have no doubt.—Did *Mr. O. Turner* shew you a dish the next morning? He did; I examined it; I washed it with a tea-kettle of warm water; I first stirred it, and let it subside; I decanted it off; I found half a teaspoonful of white powder; I washed it the second time; I decidedly found it to be arsenic.—Will arsenic, cut with a knife, produce the appearance of blackness upon the knife? *I have no doubt of it**.

* The following is part of the comment on this gentleman's evidence:—"Mr. M. deposes, that there was in the remains of the dough sticking round the dish in which the *Turners'* dumplings were made, half a teaspoonful of arsenic. If the arsenic was mixed with the flour at the time of making the dough, it was doubtless spread and incorporated throughout the whole mass in uniform proportion. Every one, in the habit of going into the kitchen, knows about how much dough is left in a dish after making dumplings; if collected, it would hardly exceed the size of a walnut, or one-eighth of a dumpling. If, therefore, there was in that quantity half a teaspoonful of arsenic, which it has been ascertained would weigh at least fifty grains, there would have been in the four dumplings and a half actually eaten, a quantity of arsenic weighing 1,800 grains. Now, as five grains of arsenic would destroy any human being who swallowed it, the quantity in *Mrs. Turner's* quarter of a dumpling was equal to the death of ten persons; that in her husband's dumpling and a half would have killed 120; and if *Mr. O. Turner* and *E. Fenning's* proportions of dumpling were alike, each of theirs held a proportion equal to the death of 110

According to the principle upon which this Appendix is constructed — that of avoiding as entirely as possible all extra-professional testimony, and moral considerations, I have confined myself closely to the medical relations of this investigation. Of Dr. Watkins, I have not the least personal knowledge. At

persons; so that the quantity of arsenic in the four dumplings and a half, would have destroyed 360 people! The large portion of arsenic, therefore, in the small quantity of dough remaining in the dish after making the dumplings, is only to be accounted for by supposing that a portion of arsenic was sprinkled or strewed upon the surface of the dough whilst in the pan or dish before the fire; in which case, upon making the dough into dumplings, although the greater quantity would be incorporated, yet a considerable portion would fall off into the dish. * * * * * Mr. M. found it to be arsenic, but he has not stated how he *knew* it to be so. Did Mr. M, by mere inspection, find it to be so? Or did he find it to be so on the authority of any other person? Did he *test* it, and when? What *tests* did he use? What *became* of the arsenic? * * * * * Was the dish the only vessel, except the flour-tub and yeast-basin, that Mr. M. examined? Did it not occur to him to examine the pot in which the dumplings were boiled? What became of the water they were boiled in? Was there any more arsenic held in solution in that water, after a quarter of an hour's boiling of the dumplings, than would have escaped from them? Did Mr. M. inquire, where the water was got from that the dumplings were mixed with, and did he inspect the vessel it was fetched in? Did he examine the milk-can that hung in the kitchen? and the salt-vessel from which the salt was taken for the dumplings? Did he examine the sauce? * * * * *

"Mr. Marshall is asked if arsenic, cut with a knife, will produce the appearance of blackness upon the knife? He immediately answers, '*I have no doubt of it.*' Was Mr. Marshall aware that he was giving evidence and opinions upon oath, which from him, as a *professional man*, the jury would assume as true; but which, if they had been uttered by a man not professional, would have had no weight with them? Did not Mr. Marshall know, when he swore he had *no doubt* arsenic would turn a knife black, that the jury would believe, upon that oath, that arsenic *would* turn a knife black?" * * * * *

"Mr. Marshall swore that ALL THE SYMPTOMS attending the family WERE PRODUCED BY ARSENIC: he had no doubt of it — BY THE SYMPTOMS! He likewise swore, that the white powder in the dish he decidedly FOUND to be ARSENIC; and he also swore — that he had *no doubt* ARSENIC would BLACKEN a knife."

The acuteness and pertinence of these questions require no elucidation; but as they do not come from an ostensibly professional quarter, I think it my duty to refer to opinions that have been expressed by proper judges of the medical bearings of this part of the case, viz. the verification of the poison. The reader may consult the reviews of Mr. Marshall's own subsequent publications — particularly that in the London Medical Repository, vol. viii. p. 158 — and the Edinburgh Medical and Surgical Journal, vol. xiii. p. 518.

the time of the transaction, I was engaged in the busy scenes that were passing near Brussels and at Paris — inattentive to the politics of the Old Bailey, and ignorant of this particular event, any farther than a slight acquaintance with newspaper records might have prevented — but of which I retain not the slightest consciousness. I did not revisit England for more than three years afterwards, and my attention was not directed to the case until a still longer period had elapsed — so that I may safely declare myself free from all bias with regard to persons and interests. Looking at its merits as a medico-legal investigation, I cannot but feel deeply interested; and do consider it right to direct those who may wish for a full and important lesson on the nature and abuse of testimony, to consult this very curious and able pamphlet. It gives a vivid lesson on the duties of a medical witness, whatever may have been the truth as to the guilt of the party accused. I shall restrict any farther use of it in this place, to the following extract.

“ *Effects of Arsenic upon Yeast Dough.*—That part of the evidence relative to the weight and colour of the dumplings, and particularly of *Mrs. Turner’s* evidence, manifestly tended to persuade the jury that their heaviness and blackness were in consequence of arsenic being in the *dough*; a persuasion, the effect of most loose and erroneous reasoning, and entirely devoid of rational support. If the dumplings were *poisoned* at all, and there is NO EVIDENCE that they were — if they were poisoned with *arsenic*, and no witness proves that there was a single grain of *arsenic* in the *dumplings*; but, admitting that they were, the reasonable presumption is, that the arsenic was not incorporated in the dough at the time of the making, but that it was sprinkled or strewed on, after the dough was put before the fire *to rise*.

“ Now, it is by no means difficult to incorporate arsenic with dough prepared for dumplings, commonly called *yeast dumplings*, *after the first mixing* of the ingredients, so as to render the dough poisonous to any person who may eat of it. The *colour* of *arsenic* is not different from the colour of *flour*; one resembles the other so closely, that none but a person acquainted with the peculiar characteristics of *arsenic* can distinguish it from flour, even when *casually* sprinkled, *still less* when the two substances are mixed together.

“ *Arsenic* mixed with dough containing *yeast*, will *not* prevent the mixture from *rising*, ALTHOUGH the quantity of *arsenic* EXCEED TWO THIRDS of the mass. It is generally known, that *yeast* contains a large quantity of *carbonic acid gas* in a concentrated state: the effect of heat extricates the bubbles of *gas*, and, in the act of extrication, distends the dough until all further attraction for *caloric*, or heat, ceases by the total absence of *gas*. In this state, if the mass be confined at its sides, its surface will become elevated, and present the appearance of what is termed *rising*.

“ It is evident, that to prevent dough from *rising*, the extrication of *carbonic acid gas* by *caloric*, or heat from the fire, must also be prevented; and this can only be done by saturating the *gas* with an *alkali*, thereby breaking down the chemical *aggregation* which is produced by

the affinity of an acid to an alkali. Arsenic not being an alkali, and therefore incapable of saturating *carbonic acid gas*, it *cannot* prevent dough, or any other matter containing *carbonic acid gas*, from rising, when exposed to the action of *caloric* or heat*. Hence it is clear, that so much of the recorder's charge to the jury as instructed them that the heaviness and black appearance of the dumplings were occasioned by the arsenic, was nugatory, and unsupported by fact or experience."

"*Effects of Arsenic upon the Knives.*—That arsenic did not blacken the two knives produced by *Mr. O. Turner* on the trial, out of the three used up stairs at dinner, is as certain as that *Mr. Marshall* swore it would blacken them. A yeast dumpling, compounded with a very large proportion of arsenic, was boiled, and afterwards cut to pieces with a knife, purposely cleaned. The knife was carefully put by, with whatever of the dumpling remained on its sides after cutting; when dry, the crumbs were removed, and there was not the least blackness on the knife.

"A gentleman of chemical eminence, in the city, put more arsenic into a pint of water than could be held in solution, and boiled it at a sand heat. A clean knife being placed in the water while hot, remained there until it was cold. The knife was then taken out wet, and remained untouched until the blade became perfectly dry. It was in no way whatever discoloured.

"Arsenic moistened with water has been formed into a sort of paste, and placed upon the blade of a knife to dry there, without producing any discoloration on the surface of the blade. Arsenic moistened with water has been rubbed upon the blade of a knife with the fingers, and suffered to dry on, without changing the colour of the steel. The production of the two blackened knives, therefore, was no more proof of the presence of arsenic in the dumplings, than *Mr. Marshall's* testimony to that effect."

Case of ELIZA WARD, tried for Administering Poison. York, 1816†.

Mr. —, apothecary at —, stated that *Charlotte Ward* came to his house with a jug containing liquid, and on examination he found a white sediment at the bottom, which afterwards turned out to be arsenic, but which, from the taste, he thought to be corrosive sublimate.

Mr. Justice Bailey here observed, that the witness should not tell them it was arsenic, as the contents of the jug had never been analysed, or submitted to any test. His lordship asked the witness what quantity of arsenic would be requisite to produce death? Witness replied, that it was difficult to ascertain, as the arsenic in the shops contained whitening; but that he thought one hundred and twenty grains would be sufficient; though of that sold in the shops, it would require *one ounce*

* A note here states these conclusions to be the result of experiments.

† This case being from newspaper report, and containing assertions on the part of the medical witness which it is difficult to believe he could have made, I omit the name.

and a half. Sixty grains would produce violent retching, and the effect would be greater still on an empty, than on a full stomach; and much would also depend upon the strength of the person to whom it was administered.

Case of ROBERT SAWLE DONNALL, Surgeon, tried for the Murder of MRS. DOWNING, by Poison, at Launceston, March 31, 1817*.

FOR THE PROSECUTION.

Dr. Richard Edwards sworn.—You are a physician, resident at *Falmouth*? I am.—How many years have you been in the profession? About sixteen years.—Do you recollect being called in as a physician, to attend *Mrs. Elizabeth Downing*, upon the 3d of November? Yes, Sir; I was called in between four and five o'clock on Monday morning.—Were you in the habit of attending her? Once before, at a distant period.—When you came there, and when you were introduced into the room in which she was, what state did you find her in? I was let into the house by *Mr. Donnall*; I went into the back room, and asked him some questions as to *Mrs. Downing's* illness, and he informed me she had an attack of cholera morbus.—Did any thing more pass that was material, before you went into the room where she was? He told me she had had a similar attack a fortnight before.—Did any further communication take place? I asked him how long she had been ill, and he said she was taken ill the evening before.—Did any thing more pass? *Mr. Donnall* told me that she had been at church twice that Sunday.—Did you then proceed into the room, or did any thing more pass? Nothing more passed.—When you went into her room she was in bed? Yes, Sir, she was; I asked some questions of her attendants before I spoke to *Mrs. Downing*: she required some rousing before she could answer questions.—Were you able to rouse her? Yes, Sir.—Do you recollect any thing particular as to her situation? I asked her if she felt any pain, and she said SHE FELT HEAT IN HER STOMACH, AND ALSO CRAMP IN HER LEGS; I then felt her pulse, and found it A FREQUENT, FLUTTERING PULSE†. I then went down into the parlour again with *Mr. Donnall*, and wrote a prescription.—Did you make any further inquiries about the state of her body before you wrote the prescription? I asked some questions of *Mr. Donnall*, as to the state of her stomach and bowels, and he said that she had violent sickness, and that her bowels were very much relaxed.—After this you wrote the prescription? Yes, Sir.—Did you at that time form, or could you form any judgment of her danger, or that it was likely she would recover? I found that she was in very great danger.—You had been apprised that she had symptoms of *cholera morbus*; did you observe any thing of that kind? No; at that time she had no sickness.—Was her state such as to shew that she had? There was nothing particular to draw my attention to that being her state; there was nothing to shew the causes of the disease at that time.—How long did you stay on that

* From the Trial at large, taken in Short-hand by Alexander Frazer, 8vo.

† Principles, p. 83.

occasion? I suppose about twenty minutes; I am not certain as to the time. — Did you learn from the prisoner whether he himself had given any medicine? I understood that he had given an opening medicine, and an emetic; a saline draught in a state of effervescence, and also a pill, and some opium mixed with the saline draught: I believe he told me ten drops of laudanum.—(By *Mr. Justice Abbott*.)—Is that a large or a small dose? It is a small dose.—(By *Mr. Serjeant Lens*.)—Would that only quiet her? It was given to quiet the irritation of the stomach.—Have you ever had occasion to attend a person who had been ill, and who died of *cholera morbus*? I never had a patient who died of that disease. There is one circumstance I would mention: before I left *Mr. Donnell*, I told him that, as the quantity of active medicine in the prescription was small, he had better give it every three hours, instead of four hours, as directed in the prescription; and observed at the same time, that it was given in order to remove something which I considered to be offensive, either in the stomach or bowels.—IN THE COURSE OF YOUR EXPERIENCE, HOW SOON DOES CHOLERA MORBUS PRODUCE DEATH? In general, not in less than two or three days; there may be some instances, but I never met with one that produced death in less than that time*. — The space of time in this instance was fourteen days? Yes, Sir.—Can you tell me of any instance that *cholera morbus* would produce death in so short a time? I NEVER HEARD, OR KNEW OF ANY INSTANCE, OF ITS PRODUCING DEATH IN SO SHORT A TIME†.—In your judgment then, and from what you know since, did this patient die of *cholera morbus* or not? CERTAINLY NOT.—You say you staid about twenty minutes? About that time.—You then took your leave, having given directions about the prescription, which you took for granted would be administered afterwards? Yes, Sir.—Did you see *Mrs. Downing* afterwards? No, Sir.—She died at eight o'clock that same morning? Yes.—How soon did you go again, after you had heard of her decease? I went on the Thursday afternoon to examine the body.—When you went there, was it to examine the body as to the cause of the death? Yes; I was requested by the coroner to examine the body.—You had heard of the letter that was sent, on suspicion being awakened? Yes.—Whom did you meet there? *Mr. Donnell*.—Was there any other person there? Soon afterwards, *Mr. John Street*, a surgeon, came there.—There is another person of the name of *Street*, a surgeon? Yes, Sir; but this was *Mr. John Street*.—Shortly afterwards, did you go into the room where the body lay? Yes, Sir.—Did any thing pass before? Nothing particular.—Who went with you? *Mr. John Street*, and *Mr. Donnell*; there was no other medical person present.—What did you do? We took the body from the shell, and placed it on the table.—Who proceeded to operate on the body? When the things were prepared, such as water, &c. I perceived *Mr.*

* The question of the learned judge as to the course of this disease, must be considered as relating to its history in this climate. That most formidable scourge of the East, known by the same name, and which is reported to be now passing into Europe, is unrivalled in rapidity by any morbid cause of death.

† Of course Dr. Edwards, for whom no sensible man can entertain any sentiment but respect, from this occasion of knowing him, is now aware that the disease has run a more rapid course.

Donnall preparing to operate, with the instruments in his hands, and turning up the cuffs of his coat. — Did he proceed? No; I told him that he was to have nothing to do with the operation, and I turned to *Mr. John Street*, and asked him to do it. — (By *Mr. Justice Abbott*.) — Did you say any thing more to *Donnall*, than that he was to have nothing to do with the operation? No, my Lord. — (By *Mr. Serjeant Lens*.) — Did he (*Mr. Street*) prepare to do it? He objected to it, as not having been in the habit of operating for a long time*. — And in the end, you were under the necessity of doing it yourself? Yes, Sir, with *Mr. Street's* occasional assistance. — When you opened the body, your particular object was the examination of the stomach? Yes, it was the chief object of our examination, and we proceeded to do so immediately: WE OPENED IT, AND EXAMINED IT, AND POURED THE CONTENTS INTO A BASIN. — Did you take all the contents, or only a part? The whole of the contents. — What was done with them after they were put into the basin? *We examined that which was put into the basin with our fingers, in order to ascertain WHETHER ANY HEAVY OR GRITTY SUBSTANCE HAD SUBSIDED TO THE BOTTOM*†. — (By *Mr. Justice Abbott*.) — When you say "we," whom do you mean besides yourself? *Mr. John Street*, my Lord. — (By *Mr. Serjeant Lens*.) — *Donnall* did not interfere? No, Sir. — In a few minutes you examined the bottom? Yes. — Did you find any deposit? No deposit of any heavy substance. — When you had done that, what did you do next? Before we particularly examined the contents of the stomach, we examined the state of the stomach, and found it inflamed‡. — Was it a general, or partial inflammation? It was rather partial, or what we call stellated, or in stars, in different parts of the stomach. — Were there many? Were there several, or only one, or were there two or three? There were many in different parts of the stomach. — Was there any thing else you discovered? On examining the villous or internal coat of the stomach, we found it softened, and in some parts nearly destroyed, by the action of some corrosive substance. The stellated inflammation was on the nervous coat, but was very visible through the villous coat. — Are we to understand that the villous coat is in general not so soft? What should its natural state be? It should have been much more firm than we found it. — In what way did you examine the villous coat? With the nail of my finger, and it easily came off. — And in its proper state would it come off easily with the nail of a finger? No, Sir; we examined particularly the under part where the fluid was. — Was it generally in that soft state? The greatest part of it was so||. — (By *Mr. Justice Abbott*.) — The under part is where any thing in the stomach would rest and touch? Yes, my Lord. — (By *Mr. Serjeant Lens*.) — Did you observe any particularity in the appearance? The blood-vessels of the stomach were rather in a more turgid state than they should be naturally. We also examined the liver and lungs, and both appeared in a sound state. — Did you ex-

* And though the commendation be a sorry one, yet as a medical jurist, I must approve of his conduct in so doing. See the text above, chap. ix. and Principles, p. 95, where there is particular allusion made to this case.

† Principles, p. 100.

|| Ibid. pp. 84, 85.

‡ Ibid. p. 84.

amine the heart? I do not recollect; I am not quite certain.—Do you think that any thing affected it? I did not examine it, that I recollect.—Did you give any directions as to what was put into the basin? After examining the contents of the stomach, which were put into the basin, we poured them into an earthen jug.—And your attention was particularly drawn to that in the basin? I placed the jug upon a chair, on which there was a cushion, and I took particular care that, as the seat was elastic, it should rest against the back, so as not to fall; and I said at the time, that it must be taken particular care of, as it was necessary for me to examine it.—Was that said to any one in particular, or was it said generally? Particularly to *Mr. Donnell*; we were very near each other.—Was there any other person present but you three? Not at that time.—(By *Mr. Justice Abbott*).—The prisoner *Donnell* was in the room at that time? Yes, my Lord.—(By *Mr. Serjeant Lens*).—What did you proceed to do then? We proceeded to examine the intestines, and found them also inflamed in different parts, particularly that part which was next the stomach, and some others that were lower down.—Could a patient be sensible of the existence of such an inflammation, or might it remain for any time, and the patient be perfectly well? That is impossible; a patient could not be well with such an inflammation existing.—Could you judge at all of the length of time in which, in the common course of nature, such an inflammation could be produced by any natural cause? Could it be produced by any natural cause? Not in the time.—Such an inflammation could be produced by a natural cause, but not within the time? Not within the time.—What sort of substances will produce that sort of inflammation in so short a time, not being natural causes? Any active poison.—Could it be produced by any thing short of an active poison in any time, or within so short a time? I think not.—Did you proceed, then, to see whether there was any thing to be discovered of an active nature? I then turned to the contents of the stomach, which I had placed in a jug.—(By *Mr. Justice Abbott*).—Then your back had been to the jug? It was behind, or rather on my left side.—(By *Mr. Serjeant Lens*).—When you had turned round, did you find it in the same situation? Yes, I found it in the same situation, but I was surprised to see it empty.—Did you express that surprise to any body? I expressed it to *Mr. Donnell*, and asked him what had become of it, and he told me he had thrown it into the chamber utensil. I observed to him that he ought not to have done so, as I had before said that it must be carefully preserved; and I observed to him also, that it would give me a great deal more trouble, as I must evaporate a larger quantity of water than I should otherwise have had to do, to get at the object of my search.—Can you tell us what the quantity was in the basin, and what the quantity was afterwards? It was a little more than half a pint originally.—And what was the quantity when mixed with the other water? Nearly two quarts: the chamber vessel was clean when I came into the room.—What had occasioned any used water in it? I threw some of the water into it, in which we had washed some part of the intestines.—What was then done with it? As soon as we had finished the examination, I left it to *Mr. Street's* charge, who told me he would take care of the contents of the stomach.—You did not see them again until they were at your own house? No, not till they were brought there in two bottles. I recollect putting this chamber utensil further under the bed, in order that it might not be disturbed; and desired that no one should

touch it, or go into the room during our absence, *Mr. Donnell* still remaining. *Mr. Donnell* had been out of the room once or twice.—But was he there when that direction was given? Yes, Sir.—Did you afterwards, and when, proceed to examine the contents of the two bottles? It was two days before I had finished that examination.—How soon afterwards did you see it in the two bottles in your house? On the same day that we examined the body.—Did you, upon examination, trace any thing of the sort that you looked for? I examined it in different ways by chemical tests, and they all shewed the presence of arsenic. If necessary, I will state the method I followed.—In consequence of the experiment; you detected it to be arsenic? **ARSENIC IN SOLUTION, BUT NOT IN SUBSTANCE.**—How did you detect it? I tried it by chemical re-agents that would produce a certain colour when arsenic was present.—In general, upon that part of the subject, what is your opinion of the cause of the death of this lady, from your observation, or what you took away and examined afterwards? From the appearance of the stomach, and the examination of its contents, I have not the least doubt that it was produced by poison.—Independently of that appearing to be arsenic, what is your opinion of the general appearance, so as to judge of the cause of the death? I have no doubt that the death was produced by the effects of arsenic.—COULD YOU HAVE FORMED ANY JUDGMENT INDEPENDENTLY OF THE ANALYSIS, OR IS THIS LATTER PART NECESSARY TO YOUR JUDGMENT? I should have believed, from the examination of the stomach and intestines only, that the death had been produced by some corrosive substance.—*Should you have been of opinion, without any analysis, but from the general appearance of the stomach, that she had died of poison?* I should certainly have been of that opinion.—But not *arsenic* in particular? No, but some *corrosive substance*.—Could that corrosive substance have been produced in the body itself, or must it have been administered from without? It is not possible that it should have been produced internally; it must have been introduced from without.

(Cross-examined by *Mr. Serjeant Pell*.)—I think you said, that you found this lady's pulse frequent and fluttering? Yes, Sir.—The medicine you prescribed for her was of a purgative nature? Yes.—How often would she have had to take that medicine, between the time you gave that prescription, and the time when she died? I gave her the prescription for every four hours, but I left instructions to give it every three hours.—Is that the prescription? (shewing it). Yes, Sir.—Be so good as to mention what are the materials—or first, what is the nature of that complaint called *cholera morbus*? It is generally produced in hot seasons, by bile getting into the stomach, and causing irritation in the stomach and bowels.—*Is not CRAMP* sometimes a symptom of a violent bilious attack?* Cramp often comes on in violent irritations of the stomach and bowels, whatever may be the cause of that irritation.—Is not cramp a *certain symptom* of a violent bilious attack? It very often accompanies it.—(By *Mr. Justice Abbott*.)—Cramp of the legs generally arises from those causes? Yes, my Lord; most frequently from a vio-

* It should be borne in mind, that this question alludes not only to the statement given by the witness on his chief examination as to cramp being present, but to the doctrine that cramp is one of the symptoms that denote arsenical poisoning.

lent action of the stomach.—(By *Mr. Serjeant Pell*.)—Might it not arise from a bilious disorganization of the stomach? Yes.—This complaint of *cholera morbus* may proceed to a very painful degree? It may kill.—Is it a very painful complaint? It is a very distressing complaint.—As far as you have had an opportunity of visiting patients, do you know it to be a painful complaint? It produces cramp, which is painful, and it certainly produces pain in the stomach and bowels, by its violent action.—Do you apprehend that a purgative medicine would be a proper medicine for a person in that situation, supposing it to have been *cholera morbus*? There were no symptoms of *cholera morbus* when I saw *Mrs. Downing*; but from what I heard of her complaint, I imagined that there was something offensive, either in the stomach or bowels, which ought to be evacuated.—Were ten drops of laudanum a proper thing to give her? It is sometimes given to allay the irritation of those parts.—Might not a powerful administration of laudanum be of use in *cholera morbus*? Seldom, I think, in large quantities; but is given in small doses frequently, if the case be urgent.—I think you have stated, that the result of your chemical experience was not the production of any gross arsenic, or arsenic in substance? Not arsenic in substance.—And you judge from the application of chemical tests? Yes, Sir.—Be so good as to state what the chemical tests were which you used? The first was with the *sulphate of copper*, which is the common blue vitriol. If you put a little carbonate of potash into water containing a solution of arsenic, and then add the sulphate of copper in solution, a green precipitate will be produced; whereas, if no arsenic be present, a blue precipitate will be formed: that was the first test which I used.—What was the second test? The second test was with the *nitrate of silver*, or common lunar caustic; (these are the same substance, but the lunar caustic is the more common term.) Put a little carbonate of potash into water containing arsenic in solution, and dip the end of a *cylindrical* piece of lunar caustic into the water, a yellow precipitate will be produced; whereas, if no arsenic be present, a WHITE PRECIPITATE would be formed. Those were the chief tests which I used; but in order to ascertain whether any thing which had been taken into the stomach, or was naturally contained in it, would alter the appearances produced by the tests, so as to make the result uncertain, I tried other experiments. I concluded that bile formed a part of the contents of the stomach; I therefore procured some, and mixed it with water, and subjected it to the same tests, in the same manner, and I found that the appearance of the precipitate was not the same as if arsenic were present. I therefore inferred that bile, in the quantity in which it may occasionally be found in the stomach, would not alter the conclusion I had drawn from the result of my first experiments. I was informed that *Mrs. Downing* had eaten ONIONS. I boiled some in water in the usual way, and after pouring off the water in which they were boiled, I poured some boiling water on them, and left them to stand for some hours; I then ascertained what effect this water would produce on the tests, and was satisfied that it *would not*, when the experiment was carefully made, produce the appearance of arsenic. I also understood that some tartarized antimony had been given. I tried the tests with a solution of that substance, and the precipitate had not the appearance which arsenic, if present, would put on.—Do you happen to know who was the first person who discovered these tests? I believe *Mr. Hume* discovered that with nitrate of silver.—Do you know *Dr. Marcet*? Yes, I know him from his writings, to

be a very clever man.—You don't happen to know whether he first discovered this mode? No*.—Do you know of any mode of managing any fluid substance in which arsenic has been mixed, so as to produce arsenic in substance? By evaporating the solution containing arsenic, and by exposing it to heat in a close vessel, you will produce it in a white solid state; and by mixing the residuum of a solution of arsenic with an inflammable substance, arsenic will be sublimed in its metallic state by the same process.—The result of that experiment would not have deceived any one in the world? It would not, certainly; but there was such a small quantity left, after my other experiments, that it was not tried.—It would have produced it, so that ANY PERSON WOULD KNOW THE THING TO BE ARSENIC? CERTAINLY†.—You mix the fluid in which the arsenic is with an alkali, when you seek to reproduce the mineral in substance? You mix the solution with an alkali, don't you? No, there is no occasion for an alkali.—You put it in solution, and expose it to heat? If the arsenic be in solution, it must be evaporated; and by doing that which I have before stated with the residuum, it will be produced in its metallic state.—With respect to the other tests, do you consider those as conclusive and infallible? Yes, in the way I used them.—This business, of course, must have made a great bustle in Falmouth, when people first talked about it? Yes, Sir.—When were you examined before the coroner? Upon the same day of the funeral, and on the Thursday preceding. I begged the inquest might be put off for two days, till I had examined the contents of the stomach; and it was put off for two days.—You were examined, I believe, after you made the analysis? I remember that I was examined on the Thursday, as to the appearances I found in the stomach.—Can you recollect whether you did or did not state, before the gentlemen of the jury, that the appearances of the stomach were such as proceeded from a natural cause? No, certainly not.—You did, however, desire that it might be postponed two days, that you might make some experiments on the contents of the stomach? Yes, Sir.—Are persons, particularly women, of an elderly time of life, more subject to the *cholera morbus* than people who are young? There is very little difference.—The age of the person does not predispose him or her more to that complaint, than a youthful person? No, I don't think it does; it is rather the contrary.—You say there was nothing in the chamber vessel but water that had been poured in, with which you had washed some parts of the stomach? I poured the water in myself, at a time when I believe it was empty: so that the effect of it would be only to give more trouble in evaporating a greater quantity of fluid, it having been made more.

(Re-examined by *Mr. Serjeant Lens*.)—You have been asked several questions about the nature of *cholera morbus*: do you change your opinion in any respect as to this not being *cholera morbus* that occasioned the death? I do not.—You have been

* With submission, I should feel inclined to say that this course of examination is not in strict accordance with that respect which is so much insisted on, to what may be called *proximate evidence*. This is like authorising an opinion to be given at second-hand.

† See what Dr. Paris says upon this point, in his *Pharmacologia*: and Dr. Christison, in a paper in the *Edinburgh Medical and Surgical Journal*, for July 1824.

asked particularly about a third test, that you did not make use of; I wish to ask you how it happened that you did not resort to that test, as well as to others? There was not sufficient left, so as to ascertain it accurately.—So that that last test would not be so proper as the others? The tests I used would detect a more minute portion of arsenic, and therefore were more proper for that occasion, as I found that there could not be much arsenic in the fluid, from the appearances produced by these tests.—And that was the reason that you resorted to those tests, instead of this last test, which you did not use. Had the quantity been larger, how would you have proceeded? I should have resorted also to the last, if there had been a larger quantity. (By *Mr. Justice Abbott*.)—The portion detected was very small? Yes, my Lord.—Do I understand you to say that it was so small that you did not think it fit to try the other test, or that of evaporation? That was my reason; I accounted for the smallness of the quantity of poison in this way—from the frequent throwing up, and the purgings, which would carry off large portions*.—Suppose the contents of the stomach had been suffered to remain in the jug as you had put them, unmixed with any quantity of fluid, would it have been more easy to perform the experiment, and securing its effect? There would be the same result, but a difference in regard to the length of time that it would take to evaporate.—After having tried and made use of the tests, would it have been practicable still to have tried the test by evaporation and sublimation? I did not do it, as the quantity of fluid left was so small, and I did not conceive that a small quantity would do. If I had evaporated the whole of it in the first place, I might, perhaps, have detected arsenic in substance; but I had made use of a great quantity in trying the other tests, which I threw away.—That would not have been proper to have tried again, that which had been tried before? It would not have been so easily done.—The application of the lunar caustic in the one instance, and the sulphate of copper in the other, would not have prevented the other operation? It would not have been so correct†.—Do you happen to know that the prisoner, *Mr. Donmall*, ever desired that any other test should be applied? I don't recollect that he did; but some one came to my house, and requested me to give him a part of the contents of the stomach to try it, but I had none.—If any application was made, it was too late? Yes, my Lord.—Was any person with you when you tried these tests? *Mr. Street*, a brother of the gentleman I have spoken of, was with me.—That is *Mr. Samuel Spyvee Street*? Yes, my Lord.—Any other person at the other time of the experiments? *Mr. John Street* was present at the other.—(Witness withdrew.)

Mr. John Street sworn.—(By *Mr. Gazelee*.)—You were a surgeon? Yes, Sir.—How long have you been retired from that profession? About five years.—Was any application made to you, to attend the opening of the body of *Mrs. Downing*? Yes, Sir, there was.—Who applied to

* The doctrine is too well known to require more than repetition here, that poisons (and specifically arsenic,) will cause death, though not a particle remains in the body.

† It has been remarked particularly upon this part of the gentleman's evidence, that he was mistaken on this point—for the previous process of precipitation will not prevent the reduction of the salt to the metallic state.

you? *Mr. Donmall.*—Upon what day did he apply to you? Upon the *Thursday.*—To assist him in opening the body? Yes, Sir. * * *—The operation was performed by Dr. Edwards? Yes, and I assisted him.—Do you remember the circumstance of the contents of the stomach being taken out, and put into a jug? Yes, I do*. —

Dr. Edwards recalled. (Re-examined by *Mr. Justice Abbott.*)—I wish to ask you this question, whether arsenic may be administered in a fluid state? Yes, my lord, it may.—The usual way is in grains or in powder, but it may be administered in a fluid state? Yes, my lord, it may be dissolved in water, and administered.—May such a solution be made very strong? If it be dissolved in hot water, it will contain a large portion; but if in cold water, it will not hold more than in the proportion of one-eightieth part of the water.—When you obtain a solution of arsenic, what quantity will be contained in the hot water, or what quantity of that water would be sufficient to occasion death? I cannot say exactly.—Two or three teaspoonsful†? Very little more than that, I should suppose.—Two dessert-spoonsful? I dare say it would.—A table-spoonful? Yes, my lord: if an alkali be dissolved in the water first, it will hold a larger proportion in solution; but, if dissolved in the common way, I should think a table-spoonful would be sufficient to produce death. — — —

Ann Blight sworn.—You are a servant of *Dr. Edwards*? Yes, Sir.—Did you receive the two bottles from *Lieut. O'Brien*? Yes, Sir.—Did you afterwards give them to your master? Yes, I carried them into the parlour, and put them upon the side-table. — — —

Mr. Samuel Spyvee Street. Do you understand chemistry? I have attended chemical lectures.—What are you? A surgeon.—Were you present at the examination *Dr. Edwards* speaks of? Yes, on the Saturday when he examined the contents of the bottles.—Did he make the experiments in presence of the jury? No, he made them in his own house.—What was your judgment from those experiments? In my judgment, I conceived that there was the presence of arsenic. — — —

THE PRISONER'S DEFENCE‡.

My Lord, and Gentlemen of the Jury, — I entreat your attention for a short time, while I submit to your consideration a few remarks as to the heinous offence for which I stand indicted — a charge, which involves at once both my character and my life. Although I have had continual reports circulating against me, I intreat you to banish them from your recollection in considering this awful subject. The crime of which I am accused, is one of which I am perfectly innocent; it is a crime most revolting to my nature, and in direct contradiction to every action of my life. I rely with entire confidence on the court, being

* This witness went on fully corroborating the statements of *Dr. Edwards* as to the course of procedure.

† This is a common inaccuracy — the word should be teaspoonsfuls. The question is almost literally (as given here) two or three tea-spoons, full of arsenic; a spoonful is a certain measure, the plural of which has nothing to do with a number of spoons, but with the number of times one spoon may have been filled.

‡ Several lay witnesses were intermediately examined.

convinced that justice and mercy are peculiarly the characteristics both of judge and jury, and being confident that you will consider my case with the utmost impartiality; and, consequently, that I shall receive that verdict, which will convince the world that I do not merit to be accused of that charge which has been made against me.

Mr. Justice Abbott (to the prisoner.) You may hand that paper

III.

Dr. Adam Neale (examined by *Mr. Serjeant Pell*.)—I believe you are a physician at *Exeter*? Yes, Sir.—Have you, in the course of your medical experience, been called upon to attend cases of *cholera morbus*? Yes, frequently.—From what cause, in general, does *cholera morbus* arise? It generally arises from putrid bile collected in the intestines, which is thrown off by vomiting and diarrhœa, or purging.—Is it a disorder which is in its nature fatal? It is the most acute disease known in Great Britain*.—What do you mean by the term ‘acute?’ I mean by the term ‘acute,’ a disease which runs its course in the most rapid manner.—What should be the usual course of attack of *cholera morbus* as to duration, supposing the patient ultimately died of it? *It very frequently kills the patient within twenty-four hours, and if neglected, or improperly treated, it kills the patient in a much shorter period.*—What should you esteem a reasonable time of a person of the age of sixty-four or sixty-five having the complaint? what should you expect to find in a person with this complaint? Constant vomiting and purging, attended with pain in the stomach, and cramp in the legs.—In that state of the disorder, what should you prescribe? I should prescribe that the patient drink plentifully of any warm fluid, such as mutton-broth, or tea, and then *I should give a large dose of opium.*—Supposing you were called in to attend a woman with the symptoms you have mentioned, whose pulse was frequent and fluttering, what would you prescribe? I should then give her a large dose of opium, and I should repeat it at intervals, until the retching, vomiting, and diarrhœa ceased, or till she felt better.—I shall not trouble you, nor my Lord, by going through the particular circumstances which *Dr. Edwards* has spoken to, but merely ask you, had you the pleasure of hearing his evidence? I had.—Did you hear distinctly the description he gave of the appearance of the stomach after it was opened? I did.—To what cause should you, independently of other circumstances, have attributed those appearances? To no cause but the disease.—(By *Mr. Justice Abbott*.) What disease? To the disease of *cholera morbus*.—Do you mean to say, that they are indications of nothing else? No, my Lord.—They are indications of that disease as well as others? Yes, my Lord.—(By *Mr. Serjeant Pell*.) Would *cholera morbus* have that appearance? *I think so.*—(By *Mr. Justice Abbott*.) *Did you ever see the body of a person opened, who had died of cholera morbus?* *I have not, my Lord*†.—(By *Mr. Serjeant Pell*.) Have you had, in the course of your practice, occasion to make experiments in

* This is a round assertion.

† Of course I cannot object to a physician giving a statement as his opinion upon the knowledge he has derived from the experience of others, in the absence of his own; but as long as evidence is required in the present manner, it is not too much to assert that this part of this witness’s testimony is not evidence.

chemistry? Yes, Sir.—Did you hear the first experiment or test which *Dr. Edwards* stated he had made, namely, that by the sulphate of copper? Yes, Sir.—In your judgment, is that test an infallible test of arsenic being present in solution? By no means.—Have you heard of the other test that he tried, namely, that by means of the nitrate of silver, or lunar caustic? I have.—What is your judgment of that species of test as to arsenic? That it is equally fallible.—Now, as to the test with bile? No, [meaning, that test is not infallible;] from the presence of phosphoric acid, the same yellow-coloured precipitate will be thrown down, if some lunar caustic be put into a solution of phosphate of soda.—What do you esteem to be a complete test of arsenic being held in solution in any complicated body? I do not conceive that there is any complete test, but the evaporating of the solution, and reproducing the arsenic in its metallic state.—Have you made any experiment upon any mixture, through the medium of nitrate of silver, or the lunar caustic, in which onions have been infused? Yes, with a decoction of onions.—Be so good as to state particularly what that experiment was that you made. I made it within the last five days; I made a decoction of onions, and added the carbonate of potass together with the lunar caustic, and a pale yellow cloud was produced; the liquor became opaque, and a cloud, of a colour between white and yellow, or opal, or precious-stone colour, was produced.—(By *Mr. Justice Abbott*.) Through the whole body? Yes, my Lord; I then varied the experiment, and added to it the phosphate of soda.—(By *Mr. Serjeant Pell*.) After this opaline cloud had been produced, what other effect had it? It precipitated gradually; there was a precipitation.—(By *Mr. Justice Abbott*.) This dark shade, or yellowish-white cloud, precipitated to the bottom? Yes, my Lord.—Was that of the nature of what you call precipitation? Yes, my Lord.—(By *Mr. Serjeant Pell*.) Well, Sir? I added some solution of phosphate of soda, and a solution of lunar caustic, and I then obtained a yellow precipitate.—(Cross-examined by *Mr. Serjeant Lens*.) I understood you to say, that you never did, in point of fact, examine the body of a person that died of *cholera morbus*? I never did; I only conclude, as a matter of science, that such would be the appearance; but I never did, in point of fact, open the body: I only conclude, that that would be the sort of inflammation.—Now, as to this decoction of onions, would one taking rabbits, smothered in onions, be said to be taking a decoction? The juice of the onions would be conveyed into the stomach: perhaps it would be as well to explain to the court what is my motive.—(By *Mr. Justice Abbott*.) We don't want that; we only want to know, whether a decoction be the same as that which would be conveyed by eating boiled onions? The same fluid would be conveyed into the stomach.—(By *Mr. Serjeant Lens*.) That is a decoction of onions? Yes, Sir.—But the greatest part is drawn off by the preparation? Some must infallibly remain. The experiment I made was by cutting an onion into various pieces, and putting it into two wine-glassesful of water*, and upon that decoction my experiment proceeded; or by pouring boiling water over it, or boiling it for two minutes, and then I tried the experiment both with the liquid and with the boiled onion, and the effects were the

* That is to say, of course, two glasses filled with water.

same. — So that the small quantity that remained in the one case, had the same effect as the extract in the other? Yes, Sir. — That which is used at table must be considerably weaker than that sort of preparation? A considerable part, but not the whole, otherwise the flavour would be all gone. — (By *Mr. Justice Abbott*.) In proportion as the strength and flavour is diminished, so is the strength of the juice diminished? Yes, my Lord. — (By *Mr. Serjeant Lens*.) Do you mean to say, that that mode [the test by evaporation] is absolutely an infallible mode of detecting arsenic? I speak by the practice of all physicians, both at home and abroad, that it will be positively detected by that mode to be present; but I don't mean to say, that *Dr. Edwards's* experiment will not do it also; but the phosphate of soda will produce the same thing. — Of course, if necessary to inquire as to the fact of its presence, whether it be produced by one or the other of these modes, you would inquire into collateral circumstances? Certainly; but if you speak chemically, I should conceive none decisive, without the production of the metal. — In your judgment, this is the best test that can be resorted to? I do not speak from my own judgment merely, but from acknowledged experiments. — Is there any considerable portion of the phosphate of soda in the bile? Phosphoric acid exists in all the fluids of the human body, in the blood and other fluids; I cannot say to what degree it may exist, but it certainly does exist in these, and in the bodies of all animals. — Does it exist to such a degree in the human bile, as to produce this effect? I have not made the experiment. — You have not made any experiment, either in one way or another? It is necessary that I should mention, that a French chemist, named *Denard**, has published on this subject. — (By *Mr. Justice Abbott*.) We cannot take the fact from any publication; we cannot take the fact as related by any stranger. — (By *Mr. Serjeant Pell* through *Mr. Justice Abbott*.) I wish to know, whether *Dr. Neale*, in the course of his practice, has opened many bodies, the stomachs of which were in a state of inflammation? I have, a great many. — Were those appearances the same as described by *Dr. Edwards*? They were; I have seen many instances where they were the same as described by *Dr. Edwards*. — And that, in cases in which there was no reason to suppose that there was poison administered? No reason whatever, my Lord. — Were you ever present at the opening of the body of a person who was supposed to have died by poison? I was many years ago, when I was in Scotland, and when I was a young man; but the appearances were not such as to satisfy the medical man that there was arsenic. — Is there any other substance, except this phosphate of soda, that will throw down this yellow precipitate? Not that I am aware of. — Sulphate of copper was not an infallible test, you say; explain that? If sulphate of copper be contaminated with iron, or be not pure; if it be mixed with the carbonate of potass in solution, a yellow precipitate would be produced, and the two colours will produce green. I should also state, that in mixing the solution, if the sulphate of copper should be added to a decoction or an infusion of onions, with a small quantity of the carbonate of potass, a green precipitate is also produced; I have tried it repeatedly. — Supposing a person to have been eating boiled onions for dinner, and in the course of the night to have been vomiting or purging to a

* Query *Thenard*?

violent degree, would any particular portion of the juice of the onion be left in the stomach? Not in the stomach, in a great proportion; but I think that enough may remain to affect the chemical test.—(By *Mr. Serjeant Lens* through *Mr. Justice Abbott*.) You have stated, that you have seen many bodies opened, in which the stomach was in a state of inflammation, and in the state described by *Dr. Edwards*, and yet no actual poison present in those cases; what has been the state of the villous coat of the stomach in such cases? have you attended to that? No, I have not.—Then you have only observed as to the inflammation, and so on, but not to the villous coat of the stomach? Exactly so, my Lord, and not to the villous coat of the stomach.

Dr. Daniel sworn. You have been for many years a physician at *Exeter*? Yes, Sir.—And of considerable practice there? Yes, Sir.—Have you, in your course of practice, attended many persons attacked with *cholera morbus*? I have.—What are the symptoms attendant upon that disorder? Usually considerable vomiting, affections of the bowels, purging, pains of the stomach, great thirst, and cramps or spasms of the legs.—Where you find a patient violently attacked by those symptoms, what would be the medicines you would administer? I should undoubtedly direct full doses of opium, to remove the irritation, and to check the discharge.—If you found a patient with a frequent and fluttering pulse, should you so administer? Most undoubtedly.—Have you heard the symptoms which *Mrs. Downing* is described to have had the evening before her death? Yes, Sir.—May I ask you, whether those be the symptoms of *cholera morbus*? They certainly are the symptoms of *cholera morbus*.—(Cross-examined by *Mr. Gazelee*.) Are these the symptoms of *cholera morbus* exclusively? No, Sir; they are symptoms of arsenic, or any poison.—(By *Mr. Justice Abbott*.) Within what period of time does *cholera morbus* usually produce death? Within my experience, I have seen it nearly fatal within fourteen hours.—Within what time have you known it fatal? I have never known it FATAL*; I have known a patient in imminent danger within fourteen hours, but he recovered.—In what way does that disorder usually shew itself? does it begin all at once, when the person is in good health, or gradually? I have known it rather sudden, after an illness of an hour or two.—Have you ever known an instance of a person in good health, eating a hearty dinner, and then sitting down to tea, taken instantly with vomiting and purging in that way described? I have seen a case very similar to that.—When you say very similar, will you be good enough to explain that a little more? It occurred in my practice eight years ago, to see a gentleman who was seized with sickness and nausea about five or six o'clock in the afternoon; the sickness and nausea continued increasing till one or two in the morning, and I was desired to see him; and from two to four o'clock I considered him in such danger that I had no hopes.—That does not apply to my difficulty; I want to know, what the state of health of that patient would be? that is, whether he would be troubled with a languor or illness,

* I believe we must disclose, that in this country *cholera morbus* is seldom fatal. *Dr. Neale* may have spoken the *literal* truth, when he termed it the most acute disease we have; but how far pathological history will countenance the application of the term in a medical sense, I for one must confess to have doubts.

which a person does not very well understand? or whether that person would be, just before his being so seized with it, in perfect good health? That gentleman whom I mentioned, had been delicate in his health, but had had no positive complaints.—*Cholera morbus* proceeds from bile? From bile and *corrupt humours**.—Will they collect all at once? They will shew themselves collectively within a very short period.
* * *

Mr. John Tucker, (examined by *Mr. Serjeant Pell*.) You are a surgeon living at *Exeter*? I am.—And a member of the Royal College of Surgeons? Yes, I am.—You have heard the symptoms and circumstances first described by *Dr. Edwards* and *Mr. Street*? Yes.—From the different facts which both those gentlemen have spoken to, as to the state of the stomach of the deceased when opened, what disorder should you have supposed that person to have died of? From some inflammation in the stomach.—What disorder of the human frame, in your judgment, would be likely to produce such appearances? *Hernia*, *cholera morbus*, and idiopathic inflammations, or inflammations from unknown causes; that is, when we find those appearances of the stomach, where we can assign no causes.—Now, supposing a person to have had violent retchings and purgings, accompanied with a pain in the stomach, and accompanied with such appearances as these in the stomach, if the body had been opened, to what causes would you attribute it? To *cholera morbus*, if I had not detected *hernia*.—(By *Mr. Justice Abbott*.) You mean to say, that if you had found the stomach in the state described by *Dr. Edwards*, you would ascribe that to *cholera morbus*? Yes, my Lord.—(By *Mr. Serjeant Pell*.) You have heard it stated in evidence what the plan was that *Mr. Donnall* pursued, when he administered medicine to *Mrs. Downing* that night? I have, Sir.—Was that the right or the wrong one? It was partly right, and partly wrong.—In what respect was it right? In the exhibition of opium.—In what respect was it wrong? In giving any thing that would increase the irritation that already existed.—Have you seen the prescription which *Dr. Edwards* wrote that night? No, I have not; but I would wish to see it. (Here the prescription alluded to was shewn to the witness.)—Now, supposing a person to have retchings and purgings for several hours, and that you found these attended with frequent and fluttering pulse, in that state of the illness what should you have prescribed? *I should have prescribed diametrically opposite to the prescription of Dr. Edwards*; I should consider that prescribed by *Dr. Edwards* as *adding weight to a porter's back*†.—*Mr. Justice Abbott* (to the witness.) Don't speak metaphorically; you are speaking just now of a gentleman of experience and respectability: I don't wish you to conceal your opinion, but only to speak it in different language.—(By *Mr. Serjeant Pell*.) You should have pursued a method diametrically opposite, you say; now what is the course pursued by that prescription? There was irritation already existing in the bowels, and that prescription, I conceive, would tend to

* This is jargon not fit to be introduced in evidence given upon oath. The question might have been properly interposed here—What are humours?

† The choice of expressions and style of language here must have been dictated by an *animus* not much in unison with that recommended above, at page 106.

increase that irritation.—Besides tending to increase the irritation, in your judgment, what other effect would be produced by it, in that state of the person? There was considerable debility or exhaustion, and I should think that would increase that debility and exhaustion.—What should you have given? I should have supported the patient, and given opium in large doses.—Have you had an opportunity of examining many bodies after death? A great many.—I will ask you, did it ever, in the course of your practice, happen to you to examine a body that had died of *cholera morbus*? I attended a patient, but I can state the reasons why I did not do so.—Do not state the reasons why you did not. *Then you never did open any body that had died of cholera morbus? Never**.—You have opened bodies after death? Yes, Sir, a great many.—In cases of mere accident, where death has been produced by violent injury arising from accident, have you ever had occasion to ascertain the state of such a body as that? I have.—How long ago? Eight or nine years ago.—What was the accident that occasioned the death? A fractured skull.—How long after the death was the body opened? It was either upon the second or third day.—What was the state of the stomach of that person? Highly vascular; which would lead any one unaccustomed to the complaint, to mistake it as arising from inflammation.—Now explain what you mean by the terms highly vascular? The congestion of numerous blood-vessels.—Is there any thing, as to the state of the hardness or softness of the coats of the stomach, upon which any judgment can rest? *I should suspect†* that, as it is inflamed, the coats of the stomach would be thickened and soft; for as the inflammation takes place, the parts increase in size.—Have you examined the bodies of soldiers, or of any description of persons who have died of that complaint‡? Yes, I have.—What would be the state, with respect to inflammatory appearances in the stomach, of those subjects? We generally find the coats of the stomach red and thick; we very often, but not always, find it where there is no reason whatever to suspect inflammation.—Have you applied yourself to the study of chemistry very much? Not very much; but I attended chemical lectures.—Do you happen to know, whether the chemical test through the medium of nitrate of silver or lunar caustic, is an infallible one or not, as to shewing the presence of arsenic in solution? I conceive it not to be so.—Do you recollect who it was that first proved this test? I do not know who it was that proved it first; but the first time I ever saw it described, was in a medical publication by *Dr. Marcet*, lecturer in *Guy's Hospital*.—Do you happen to know, whether there be any thing else, besides arsenic, which, if submitted to the lunar caustic, would produce the same result as it would with arsenic? I do.—What else? If there be any alkaline phosphates, it would put on the same appearance, and throw down *the same§* yellow precipitate.—Do you know whether phosphoric acid

* It is rather odd, that in so acute and *fatal* a disease, no dissection should have been made by any of the gentlemen who so described it.

† See text, *supra*, page 150.

‡ The word "complaint" can have reference to no disease but *cholera*; so that here is a palpable contradiction, apparently overlooked by all parties.

§ Inaccurately enough expressed.

and salts be contained or abound in the human frame? I have been led to believe so. — Did you hear *Dr. Edwards* give his evidence as to the test, also, of the sulphate of copper? I did.—Have you made any experiments as to the sulphate of copper? I have.—We have been told that the sulphate of copper, when added to any liquid or fluid containing arsenic, will throw down a green precipitate? Yes, it will have that effect; and I have made that experiment. — Have you made any experiment, in order to ascertain whether any green precipitate would be thrown down by sulphate of copper, when applied to any other solution than that of arsenic? I have tried it with an infusion of onions and animal matter.—(By *Mr. Justice Abbott*.) What was the result? A green precipitate, resembling that which would have been thrown down, if arsenic had been present. * * *

(Cross-examined by *Mr. Serjeant Lens*.) Did you happen to attend, when *Dr. Edwards* was the chemical lecturer at *St. Bartholomew's Hospital* in London? I was a student in the Borough, at *St. Thomas's* and *Guy's*.—Then you did not attend yourself when *Dr. Edwards* was the chemical lecturer at *St. Bartholomew's*? No, I did not.—Do we understand that you made those experiments previous to, or since this circumstance happened? Both previous to, and since this melancholy circumstance; and particularly that with the nitrate of silver: and I thought it one of the most delicate at the time I made it.—(By *Mr. Justice Abbott*.) That is the lunar caustic? Yes, my Lord. When I first made the experiment, about three years ago, I found it the most delicate test of arsenic.—What do you mean by the most delicate test of arsenic? That is, the smallest portion would be detected by it.—(By *Mr. Serjeant Lens*.) You found that at first? Yes, but I have since discovered its fallacy; and it was pointed out by the same means which discovered its delicacy as a test, because it is now ascertained that something else will produce the same appearances.—You have mentioned what? Yes, any alkaline phosphates.

Dr. Joseph Collier Cookworthy sworn. I believe you are a physician at *Plymouth*? I am.—You have been present during the course of this trial, and have heard the examination of *Dr. Edwards*? I have.—You have accordingly heard the tests that he applied to the contents of the stomach of *Mrs. Downing*? I have, Sir.—Now, I ask you whether, in your judgment and experience, those tests be or be not conclusive? I am satisfied that they are not.—When I ask you whether or not they be conclusive, I mean as to the existence of arsenic? I am certain they are not, and that they do not unequivocally shew the existence of arsenic.—Do the same results follow from experiments from other compounds? They do.—What, in your judgment, is the proper test by which the presence of arsenic would be discovered? I am borne out by all philosophical chemists in this country, in stating that the only test that can bear a man out in swearing to its presence, is the reproduction of the metal; I mean the arsenic in its metallic state.—In the other tests, is the colour of the precipitate the only thing by which to judge that arsenic is present? In what tests?—The sulphate of copper, for instance? Unless it were mixed with some carbonaceous matter, and submitted to the action of heat: where that has not been done, it is the colour only that is relied on.—Have you heard the appearances of the stomach, as described by *Dr. Edwards*? I have.—Do those appearances, in your judgment, indicate the presence of arsenic in the stomach? Although I should not have drawn the conclusion that that body had therein

received poison, I certainly should have allowed such a reflection to enter into my mind, and have acted upon it; yet I by no means think (and I speak from the experience of others), that the appearances stated to have existed, were such as only to denote the presence of arsenic. * * * (Cross-examined.) You said, that nothing but the reproduction of the arsenic would satisfy your mind as to the presence of it? It would not; and I am borne out in that belief by the best authorities in the country; nothing short of that would satisfy my mind in swearing to its presence.—(By *Mr. Justice Abbott*.) You said, that the same results would follow from other compounds? Yes, my Lord.—What other compounds would give the same result with the lunar caustic? Phosphoric acid.—And what with the sulphate of copper? Understanding that the deceased had died after a hearty dinner of rabbits and onions, I cut a large onion into slices, and took a slice of raw meat, and put them into the same vessel, and poured rather more than a pint of warm water upon the mixture, with the view of making an infusion; I allowed it to infuse for some hours, I then took a quantity of the liquid or infusion so prepared, and I applied to it the same tests: first, the subcarbonate of potass in solution; I then added the sulphate of copper in solution; the two tests which I understood *Dr. Edwards* had used.—And what was the effect produced? A green precipitate was instantly formed.—Was that experiment then complete? It was, my Lord.—Any thing else? Yes, my Lord; with another portion of the liquor I tried this other experiment: I put in some subcarbonate of potass in solution, and I then added the subnitrate of silver, or lunar caustic, and a yellow precipitate was produced.—Is there any thing further you would wish to say as to those experiments? Yes, my Lord; I used the same tests as I understood *Dr. Edwards* had used.

Mr. Samuel Luscombe (examined by *Mr. Serjeant Pell*.) You are the surgeon of the *Exeter Hospital*? Yes, Sir.—How long have you been in that situation? For fifteen or sixteen years.—During the course of that time, you have had an opportunity of examining many bodies? I have.—Have you heard *Dr. Edwards* give his evidence to-day? I have.—From the account which he has given, what would be your judgment as to the cause of that death, it being added, that the person who died had violent retchings and purgings? I should consider that those violent retchings and purgings had exhausted her, and had caused the death.—Putting out of your view those violent affections of the stomach, could you account for the cause of the inflammation? I could not, unless from discovering some poison in the coats of the stomach at the time.—Have you known, in the course of your practice, many instances of *cholera morbus*? I have known a great many.—What do you consider to be the immediate cause of *cholera morbus*? A redundancy of bile and humours upon the stomach.—If inflammation be found upon the stomach after it is opened, what appearance would it put on? The internal coats of the stomach would be very red in various parts, and the colour very florid; but in the course of two or three days, it would become more dark.—That is, it would have a stellated appearance? I never opened the body of a person who had died of *cholera morbus*.

The following passages are extracted from the charge of *Mr. (now Lord Chief) Justice Abbott*.

“ Having thus disposed of this part of the evidence, I shall now proceed to that part which relates more particularly to the two questions I mentioned, the first of which is, whether or not the deceased died of poison? Now as to this, you have this evidence—that upon the 3d of November, which was Sunday, the deceased was apparently in good health; she had been ill upon the 19th of October, having been taken ill at the house of the prisoner, or immediately upon leaving it; she returned home after supper, and at about 12 o'clock she complained of great sickness in her stomach; she vomited, and was attacked by a violent cramp in her legs; that indisposition continued for some days, and she did not entirely recover for more than a week, but it was removed. On the 31st of October, she drank tea at the house of her son John, and after her return home upon that day, which was the Sunday preceding her death, she complained a little, and took a single cup of coffee, and a slice of bread and butter, and recovered; but with that exception, she was in a state of good health and spirits, having, in fact, entirely recovered from the effects of that previous illness, which she had when first at her son-in-law's. It appears that on the Sunday she went once, if not twice, to church; that she breakfasted and dined heartily, her dinner being principally boiled rabbits, smothered with onions; upon the same day, Sunday, the 3d of November, she went again to drink tea with the prisoner, having been invited by her daughter, *Mrs. Donnall*, the wife of the prisoner; when there, she met with her other daughter, *Mrs. Jordan*, and some of her sons; upon that occasion she had one cup of cocoa, and then another. When the cocoa was poured out, the prisoner left his seat and went to the table for the purpose of handing the cups, and bread and butter; and, in doing so, passed behind the chairs of some of the party with the plate in his hand, towards *Mrs. Downing*, in doing which, he spilt some of her son *Edward's* tea upon her gown; *Edward* exclaimed, ‘*Donnall*, what are you about?’—The prisoner made no answer, but offered the bread and butter to *Mrs. Downing*, who took a piece of it. Whilst she was drinking the second cup, she complained of being sick, and soon afterwards desired one of her sons to go home with her, and when there, she was seized with violent retching and vomiting, which continued more or less, attended with frequent cramps, till about midnight, and then a violent purging took place; and at eight o'clock the next day, *Mrs. Downing* actually died. Such is the substance of what is stated by those who were present, both at the tea-drinking, and at her house upon that evening. * * *

Now, gentlemen, the result of the evidence of *Dr. Edwards* is this—that the appearances of the stomach, and the other parts of the intestines, were such as to lead him to believe that the deceased had died of some corrosive matter taken into the stomach—that is, some poison; for corrosive matter producing death, may be denominated poison. That was the opinion which he formed from what he saw and examined, connected with the symptoms of the disease with which the deceased was affected, namely, a violent vomiting and purging; for these are symptoms attendant upon the disease occasioned by arsenic: and he tells you that he should have been confirmed in his opinion, from these symptoms and appearances alone, that the deceased had died of some poison taken internally; and he draws the conclusion from his analysis, that the particular species of poison was arsenic.

* * *

This, gentlemen, is the whole of the evidence which relates to the

cause of the death of the deceased. The witness on the part of the prosecution, *Dr. Edwards*, is a material witness, representing to you, without any doubts upon his mind, that the deceased died by taking arsenic. Then this evidence is met by a great body of evidence upon the other side; but none of the evidence for the prisoner goes to shew that arsenic would not produce those appearances upon the stomach, which have been described by these witnesses for the prosecution; nor that it would not produce those particular sediments and colours which *Dr. Edwards* speaks of: that body of evidence on the part of the prisoner, however, is not calculated for that purpose; but in order to shew you that the same appearances upon the stomach may arise from disease alone, without poison, and that the same yellow and green sediments might be occasioned by other substances, as well as arsenic, agreeably to the experiments *Dr. Edwards* tried—and that those experiments are not decisive nor conclusive, as the same appearance might be occasioned and produced by other causes. * * *

Those were cases* in which no actual poison was suspected to be present, but the appearance has been the same as, in this instance, is supposed to have been occasioned by poison; yet he has not attended to the villous coat of the stomach, so as to say that it was in the state as has been described in this case. As to what he says on some experiments made by him with the onions boiled, producing the same results as were produced by the tests of *Dr. Edwards*, you will observe that his experiments were made with onions in a very different state from what onions boiled with rabbits usually are. He could by his mode get a great portion of the juice or strength of the onion in water; whereas, in regard of onions prepared for the table, or boiled with a considerable quantity of water, a great portion of their juice is withdrawn from them: for *Dr. Edwards* says, that the proportion of the juice will be the same as the proportion of the flavour. This, therefore, leaves you to say, whether onions prepared in this way, be the same as those prepared for the table; and whether there will not be a great difference in the mode of trying the experiment, even if, after vomiting and purging, sufficient will remain. That is, therefore, a statement made by this witness, which is to have as much weight as you think it deserves, but no more; as you are not to be governed by the evidence of one person, but by the result of the whole. * * *

The whole of the evidence of *Dr. Daniel* goes only to shew this, that the symptoms of disease which *Mrs. Downing* had during her life, may be symptoms either of taking arsenic, or such as generally attend the disease called cholera morbus. *

* * * The important circumstance to be observed on that evidence is this, namely, that it is not impossible, and not even improbable, that the result of these experiments, as produced by *Dr. Edwards*, was not owing to the presence of arsenic, but to the onions which the lady had dined on; but, as to the other matter, the phosphoric acid producing the same effect, I think that there cannot have been sufficient in the human body to produce that result. * * *

This then, gentlemen, is the evidence on the one side and on the other, as it applies itself to the first question I mentioned, namely, that as to the cause of the death of *Mrs. Downing*. You perceive that the witnesses for the prosecution attribute her death to poison, or some corrosive substance taken into the stomach; and some of them even

* Alluding to *Dr. Neale's* statement.

state it to have been that particular poison called arsenic: but on the other hand, the witnesses on the part of the defendant all say this, not as differing in regard to the particular symptoms usually attending the disease called *cholera morbus*, but they also say that such appearances might be produced by poison. As to the appearances upon the stomach, they were evidently produced by inflammation, which inflammation, they say, may have been derived from other causes than that it is attributed to on the part of the prosecution, and therefore, that these appearances are not infallible proofs of poison. But you will observe that theirs is *the judgment of persons who did not see the particular parts of the body which were the subject of inquiry*; they merely contradict the opinion of *Dr. Edwards*, without seeing and knowing the appearances which he saw and knew. You are therefore to judge whether greater weight ought not to be given to one who examined the subject, rather than to that of one or more who did not see the subject. Then again, as to the chemical experiments, shewing that there was the presence of arsenic, these witnesses for the prisoner say that they are not decisive, and for this reason—because as to one, the same effect may be produced by another substance, namely, phosphoric acid; but although it might be so, yet, if there were no phosphoric acid in the stomach of the deceased, or no quantity of it sufficient to produce that appearance, (whatever might have been the appearance if sufficient were put in,) the experiment is tried on something that did not contain a sufficient quantity of that matter. Although the same result might be produced by that matter, if there—yet, if there is no reason to suppose that that matter was there, or there in sufficient quantity, then I think the suspicion that arsenic was there is very strong*. With respect to the experiment upon the onions, it is spoken to by one witness very strongly, and by one other not so much so, that the same effect is produced, although not to the same extent. This lady, it appears, had eaten onions that day; but if she had not been labouring under sickness for the whole week, and had eaten onions only that day at table—and although they be capable of producing that same effect which has been described, in regard to the other tests, you are to consider whether you think that there could be a sufficient quantity of these onions remaining in this liquid contained in the stomach, to produce that effect; and if you think there was a sufficient quantity, then the evidence of *Dr. Edwards*, corroborated by the other medical gentlemen examined for the prosecution, as to its being arsenic, is very strong, as it appears that all the effect of poison was evinced. If, however, the evidence as to the opinions of these learned persons who have been examined on both sides, should lead you to *doubt* whether you should attribute the death of the deceased to arsenic having been administered to her, or to this disease called *cholera morbus*, — then, as to this question, as well as the other question, the conduct of the prisoner is most material to be taken into consideration; for he, being a medical man, could not be ignorant of many things, as to which ignorance might be shewn in other persons: he could hardly be ignorant of the proper mode of treating *cholera morbus*; he could not be ignorant that an early burial was not necessary; and when an operation was to be performed, in order to discover the cause of the death, he should not have shewn a backwardness to acquiesce in it: and when it was performing, and he attending,

* And physiological facts will bear this very pertinent, though modest observation of his Lordship, fully out,

he could not surely be ignorant that it was most material for the purposes of that investigation, that the contents of the stomach should be preserved for minute examination. Then, on the other question, supposing you should think that the deceased died by poison, you will have to consider whether that poison was administered by the prisoner himself. Now it has been justly observed to you, from its being in the course of the prisoner's profession, that he should be possessed of this particular poison called arsenic, as this, and other poisonous drugs, are sometimes wholesome, when administered in small quantities; but, when administered in large quantities, they would be dangerous; therefore, you cannot expect to have such evidence in this case, as we generally have in other cases of similar charge, as to *the purchase* of that poisonous article. Now, in order to shew you that the prisoner did in fact administer arsenic to *Mrs. Downing*, the deceased, the counsel for the prosecution offer this fact to your consideration, namely, that on the 19th of October preceding her death, the deceased having gone in perfect health to the house of *Mr. Donnall*, was afflicted during the night with symptoms of the same kind, although not to the same degree, as upon her visit on the 3d of November, which is to lead you to suppose, that at that first visit some attempt of that kind was made, although not to that extent. Now upon that second visit, the only thing the deceased took at the house of the prisoner was a cup and a half of cocoa, and bread and butter; and it is sufficiently established on the part of the prisoner, (if not on the part of the prosecution, yet it is sufficiently established by evidence,) that the cocoa which she took upon that day had not arsenic infused into the general quantity; so that, if any were put into it, it was put into that particular cup which had been given to the deceased. That it was not put into the cocoa generally, is shewn by the servant examined for the prisoner; it appearing that *Mrs. Downing* drank some part of a second cup, and the remainder of it, with what was left in the pot, was drank by that servant, and others in the kitchen, where it was carried. You have, therefore, that fact clearly established, that the whole quantity of cocoa was not poisoned that was brought to the table that day; and thus you may take it as a fact, that poison was not mixed with the whole quantity, and therefore, if mixed at all in the cocoa, it was only in the particular cup given to *Mrs. Downing* that afternoon. A great deal of evidence has been adduced, leading to this conclusion, which you are desired to draw, namely, that that first cup of cocoa which *Mrs. Downing* took, was handed to her by the prisoner himself. There were present in the room on that occasion only six persons, * * * *

They all of them say, that neither of them gave the first cup of cocoa; but these witnesses, *Samuel Downing* and *Edward Downing*, say that they recollect the prisoner's going round in that particular way described, passing between *Mrs. Jordan's* chair and *Edward's* chair, and so coming round to the face of his mother-in-law — all of which circuitous route might have been saved by going directly up to her from the opposite side of the table*. It is thus left for you to consider whether *Donnall*, the prisoner at the bar, took that opportunity, when passing in this manner behind those parties, of infusing the arsenic into

* True: but might not the prisoner, in passing *behind*, instead of crossing directly in *front* of the persons in question, have been influenced by notions of good manners?

the cocoa. You will observe, that it has been stated to you in evidence, that the arsenic might have been given either in powder or in solution; that is, by putting arsenic into hot water, and dissolving it—by which means the water will contain so much of the poisonous quality, as that a table-spoonful, perhaps a dessert-spoonful, will cause death; but whether it were in powder, or in a soluble state, there is no direct proof, nor is there any thing to lead to a conclusion, either in one way or the other: but I apprehend it might have been dissolved in the stomach itself; so that I don't know that there is any decisive evidence that it was not administered in powder.

Case of ANN BARBER, tried for the Murder of her Husband by Poison, York Assizes, August, 1821.*

Mr. J—— H—— sworn. I am a surgeon and apothecary at O——, about a mile from the place where the deceased lived. On Saturday, March 17, I was sent for to see the body: I went on Sunday morning, when the inquest was sitting, and opened the body: I was able very clearly to ascertain the cause of death: I found the stomach in a very putrid state; the coats were very much corroded: it was very much inflamed indeed: the death I attributed to mineral poison: it is within my knowledge and experience† that mineral poison would produce the effects I observed: from the coats of the stomach I took mineral poison: it was white arsenic: I proved it by a solution of ammoniated copper: the solution is purple: on putting arsenic it becomes quite *green*: nitrate of silver *does the same*‡: it is a very delicate test: I tried it by both, and found the same result: I know of no other substance but arsenic that does convert them into green‡: I am satisfied that it was arsenic: I opened the body further: the lungs were very black, which I look upon as a criterion of mineral poison: the external appearances I saw the same in cases where it was known that arsenic was taken: on the body of the deceased there were various livid spots: the *skin of* [query over] *the stomach* was quite green, twice the breadth of a man's hand: I was satisfied from the appearance that he had died of mineral poison.

(Cross-examined.) I never saw the body till Sunday morning, between eleven and twelve; and he died on Saturday morning at four, I understood: the ears were black, the finger-ends were black: convulsions would make the body look black: appearances in so aggravated a state could not be produced but by mineral poison§: matter issued

* Courier newspaper, August 14, 1821.

† This form of expression is particularly to be commended, if the witness *intended* to distinguish.

‡ Until I am instructed to the contrary, I must suppose this deposition to be correctly reported. If so, what a lamentable specimen have we here of medical testimony! It is beyond the reach of comment. And yet this was a trial for poisoning by *arsenic*, three years after the remarkable one which has been just noticed, and which has had such an effect on the article of evidence as to the testing of this poison.

§ One knows not which most to wonder at, the nonsense itself, or the complacency with which it seems to have been received.

from the mouth, which is another criterion* : convulsion is produced by many causes quite distinct from mineral poison : I really cannot tell how many mineral poisons there are : *I never applied the test before, and never saw any other person apply it* : the presence of arsenic may be detected by red-hot iron ; upon that a smell, as of garlic or onions, arises : I did not try that test, I was sufficiently convinced without that : *this poison is a subject I am very little acquainted with*† : the lungs could not have been so black in the circumstances, but by arsenic : I observed no other bruise‡ : I did not open the head, there was no occasion. * * *

(Re-examined.) None of the circumstances, but all together convinced me that the death proceeded from poison : there was not one circumstance inconsistent with that conclusion.

George Bridges Reinhard. I am a chemist and druggist in Wakefield : I have seen the prisoner before : she had been in my shop several times : I remember her coming to my shop, on Friday the 16th March, between one and two, for a pennyworth of mercury : I gave it : I asked her what she wanted it for : she said, to poison mice : I gave her about six drachms of arsenic : mercury is commonly called arsenic : I am quite sure the prisoner is the person.

(Cross-examined.) I have told all that passed : she did not ask for arsenic by that name, she asked for mercury : arsenic is *correctly* called mercury with us§ : the word arsenic was never used on that occasion : I have been frequently in a day applied to for the same purpose ||.

DEATH BY POISON. — MERCURY.

Case of JANE BUTTERFIELD, tried at Croydon for the Murder of W. SCAWEN, Esq., 19th August, 1775 ¶.

It was laid in the indictment, that she had mixed solution of corrosive sublimate of mercury with certain medicines, &c. prepared for Scawen's use.

Mr. Robert Cochran sworn. You, I believe, Sir, was apothecary to *Mr. Scawen's* family ? I was, Sir. — Do you remember being called in at any time ? On the 2d of April. — What state did you find him in then ? In a high salivation, occasioned by a tincture which was called a rheumatic tincture, which he had attributed it to, on a supposition that there was mercury in it. * * * At what

* Criterion — of what ?

† Yet he was, according to his own account, a man of EXPERIENCE !

‡ Other bruise — does arsenic bruise the lungs, as it would blacken a knife ?

§ What can this mean ? Is the word *correctly* an error of the report for *currently* ?

|| The prisoner was found guilty, and received sentence of death.

¶ From the folio report.

period was that salivation removed? The 16th of April I attended him, and gave him medicines fourteen days. — Did *Mr. S.* complain of any particular taste? He did to me of a coppery or brassy taste in his liquors. — Had this taste proceeded from a salivation, or did it attend the symptoms? I cannot positively say as to the first salivation or second, but I think between the two salivations, that he told me he had this coppery or brassy taste. — Was this salivation entirely removed on the 16th? It was so far removed, that I thought of giving him no more medicines: he was well enough to go to London, and walk round his garden, and I saw nothing, unless it was the mouth being bad from the salivation, and he was better than he was before. — When was you called in the second time? Not till the 17th of June: there were two months, intermediate time, that I did not attend him, unless it was in a friendly way, making him a visit not as a patient. — Did he make any complaints in those visits? He complained of this brassy or coppery taste being in his liquors: upon the 16th of June I made him a friendly visit, the day before any medicines were ordered; I found him then in a high salivation. * * *

You say, that on the 16th of June you found him in a high salivation? I did. — To what cause did you attribute that salivation? I believed it was the effects of giving him mercury. — Do you imagine that mercury given in April would have produced that effect? I do not believe it; I never heard of such an instance. — * * *

* * * When did you see him again after the 16th? On the 17th, Sir; *Mr. Sanxay* ordered him bark draughts then; I attended him every day till the 25th. — In what state did he continue during that time? I thought him in the utmost danger the moment I saw the first salivation; indeed, I thought him always in danger. — *

* * * I believe you furnished the bark-draughts? I did; there were six draughts sent in upon the 17th of July; he was to take them every three hours: the 18th I brought eight draughts with me; one of them was given him, all the rest I believe were not. — Were all the draughts made up in the same manner? Made up altogether: we always mix them up in a great mortar together, then divide them into equal bottles: one might be a teaspoonful more than another, but they must be all the same in quality. — * * *

What, in your judgment, was the cause of his death? The effects of mercury, which put him into a salivation, and he had not strength of constitution enough to bear that salivation. — I believe in April *Mr. Scawen* had taken some quack medicines? He had taken it in March, and, upon the 2d of April, that had had its effect. — I believe, by his desire, you administered that quack medicine to some other person? No, he did that himself before to see what effect it would have upon that person. — * * *

What were the effects produced upon him? I saw none like mercury. — * * * Do you know that he took the medicine? He told me himself that he had taken a bottle and a half. *Mr. S.* only took half a bottle.

(Cross-examined by *Serjeant Glynn*.) * * * I desire to know the general state of *Mr. Scawen's* health some time preceding his death? He had a very tender constitution. — I desire to know, whether *Mr. S.'s* constitution had not been very much weakened with quack medicines? I believe latterly he was very fearful of taking quack medicines, because he was fearful of mercury for some years past. I can give you a particular reason: I advised him to take a little preparation of mercury, but he would not do it. — Then I under-

stand by you, that *Mr. S.* was particularly apprehensive of mercury? Yes, he was. — But I will ask you a general question, whether *Mr. S.* had not frequently taken quack medicines? I do not know of his taking any quack medicine some time but that. — * * *

* * * The mercury, or whatever occasioned this salivation, operated very powerfully upon him? Yes, it did. — It was a very high salivation? Yes, it was a very high salivation. — This was about a fortnight; is that a sufficient time to get rid of a high salivation? That depends upon the quantity and the constitution — I will ask you, whether a weak constitution does not give way much more to salivation, and the effects of mercury, than a strong one? I believe it may. — You think it may? Yes, I think it may; but I am not a perfect judge of mercury: I only give you my own opinion. — I am not putting my questions to you as if you considered your answers were to be of the same weight as an eminent man of the faculty, though you have a good reputation as an apothecary* — you say the salivation was pretty well got off, and *Mr. Scawen* went abroad on the 16th — * * * did you attend to the symptoms of the salivation, so as to assure yourself that there were no effects of the salivation remaining in the mouth? He did complain of his mouth sometimes. — So *Mr. S.* sometimes, after the 16th, did complain of his mouth? Yes. — What was his particular complaint in his mouth? A tenderness in his gums. — Was there not a spitting attendant upon him afterwards? I do not remember any. — Could you, upon your judgment, say this salivation was absolutely removed, or only subsided so as it might return again? I did really believe it was removed. — I should be glad to know whether, in weak subjects, a salivation apparently removed will not return again? I never knew an instance of this after two months. — *

* * * I would ask you, in general, whether you prepared the decoctions yourself, or left them to persons in the shop? I have a journeyman that has lived with me eleven years, and I have two partners: I did not mix it myself, for I have not made up medicines for many years. — Then I need not ask you the question, whether they might not be prepared in a copper vessel? There was but one that tasted of mercury, which was not used: it was not the decoction that affected him, it was the gross bark. * * *

Then you are not sure that there might not be some mercurials or vitriol in it by accident? The bark medicines ordered, were gross bark, mixed with simple waters. — *Court.* Copperas and vitriol are the same things in point of taste, I believe? They have a taste very nigh the same. — *Mr. Serjeant Glynn.* All copper contains copperas, and that is poisonous†? I know, by experiments, that in my country they have drawn out the copperas, and that it becomes quite white, and a wholesome vessel‡. * * * You cannot

* The witness had been forty years family apothecary to the *Scawens*. See text, *supra*, page 49.

† The plain English of which, even at that time, must have been — all copper contains *green vitriol*, i. e. sulphate of iron. See the case of *Richardson*, below.

‡ This is unintelligible, unless the learned Serjeant alluded to tinning copper utensils. We have long known the fact of their being rendered safe when tinned imperfectly; and Sir H. Davy has recently promulgated the cause, the knowledge of which is likely to be made use of in a most important manner.

tell me what was applied to the ulcer? No.—And the complaint of the brassy taste was in but one of the draughts, or of the decoctions? There was no decoction in these draughts.—Now, with respect to the general merits of corrosive mercury given as a poison, does it not produce violent symptoms, violent vomiting, and very violent symptoms, when given as a poison? If it is given in small quantities, it produces no vomit nor pain; it produces what they call an unhappiness, an uneasiness.—But if given in a great quantity sufficient to poison a man? It then occasions great vomitings, sickness, and gripings.—Then I suppose it would leave appearances upon the intestines—the stomach? If it was given in so great a quantity as to destroy life in a dose or two; but if given in small quantities it would be several months in doing that. * * * *

Mr. Edmund Sanxay sworn. I believe you was acquainted with the late *Mr. Scawen*? Yes, very well.—How long were you acquainted? About fifty years. * * * You will please to tell your own story, you will tell it much better than I can put the question to you.

It was near the 4th of May the deceased called upon me, and put himself under my care for an ulcer he had in his left arm; he was very much emaciated; he told me he was just got out of a salivation, which he had been thrown into by taking a quack medicine some time before for the rheumatism; about six weeks before. I directed him a milk diet, and a decoction of sarsaparilla; he continued to attend me twice or thrice a week till the 2d of June, at which time he was much better than he had been. I directed him to continue the same plan till the 14th of June, when I desired to see him again.—I will ask you, Sir, whether from the 4th of May that you attended him, till the 2d of June, you perceived any appearances of a salivation? None at all: upon the 14th of June he came to me, and told me he had been able to continue the plan I put him on only two days, upon account of a brassy taste he perceived in his decoction of sarsaparilla, which had given him an aversion to it, and had made him very sick; that he had been frequently feverish, attended with sickness at his stomach, that his mouth began to be sore, and he apprehended he was going into another salivation. I examined his mouth, I found his gums swelled, and little ulcerations within his lips, like an approaching salivation. I directed diluting liquors, and desired to see him again upon the 16th; upon the 16th he was too ill to come to me, and I attended him at Woodcote Lodge. * * *

I found the ulcerations in his mouth greatly increased, and he was in a salivation; he spit very plentifully: that was the 16th. I told him, that this salivation which he was now in, could not be the effect of a quack medicine which he had taken three months before, and which had already produced its effect; but that it must be from mercury lately administered.—*Court.* You told him that as your opinion? I did.—And is that your opinion now? It is.—Repeat that over again, what you said just now. [*Witness did so.*] He declared it could not be produced from any medicine, for he had taken nothing but what I knew of, and the only medicine that I had at that time directed for him, was the sarsaparilla. I likewise ordered him to take some of Blackaire's livivium, or the soap lees, for the gravel, of which he complained, of which he only took one or two doses; he said it disagreed with him, and he left it off; and I ordered him some prepared chalk to be taken in his liquors occasionally, on account of an acid in his

stomach. These were the only medicines from the 4th of May to the 16th of June, that I directed. * * * The next morning I found his salivation running very high, sloughs were formed within the lips, and upon each side of the tongue. * * *

I never in my life saw a salivation which spread so rapidly.—*Court.* A slough is something of a mortification? Yes; when it is not so much fixed it is not, we call it only a foul ulcer; when it is fixed deep it is a mortification, to all intents and purposes; and when it comes away, there is a loss of substance where that was. I should have mentioned, that upon the 16th he still complained of the brassy taste which he perceived mostly in his liquors. Upon his visit of the 14th, he told me he had quarrelled with all his liquors excepting porridge, upon account of that brassy taste he had perceived from time to time in them, from the 4th May to the 17th June. I examined him now more particularly, with respect to the brassy taste—how often he had perceived it. He said every day, sometimes several times in the day. I asked whether he was always made sick by the liquor which he took that had that brassy taste? His answer was always yes.—I asked whether it produced pain in his stomach? He said no; he felt a distress about his stomach, not pain.—Is that a symptom of mercury? It is peculiar to a solution of corrosive sublimate. I have often heard my patients complain of a distress in their stomach when they took corrosive sublimate.—And the brassy taste? And the brassy taste; it is a peculiar taste.—What is the distress, a sort of lowness of spirits? Not lowness of spirits, but a general uneasy sensation that don't amount to pain, but is attended with sickness. I said to him, I don't like this brassy taste in your liquors; are they boiled in copper? No, says the prisoner, they are all boiled in silver; he said, "as to the brassy taste, I attribute it to the particular situation my mouth is in when I drink; for out of the same bowl, which was never out of my sight, some cups shall taste brassy, and others perfectly sweet and good." I then desired that for the future he would wash his mouth with whatever liquors were given him to drink, and spit it out; that if he observed the brassy taste in what he washed his mouth with, he would preserve the remainder of it for me to examine it. * * *

* * * I farther told him, I was clearly of opinion that mercury had been given him. She * declared it was impossible, for that *Mr. Scawen* had taken nothing but from her hands. * * * Upon Sunday, the 18th, I found him in much the same situation as the day before. I asked him whether any brassy taste had appeared in any of his liquors, from the time of my ordering him to wash his mouth with it, till the time I saw him upon the Sunday? He said no; all that he had taken since was perfectly sweet and good. Upon Monday, the 19th, when I visited him again, I found him very sick; he had just been vomiting. I immediately asked him whether he had perceived any brassy taste in any of his liquors; he answered "no, but in the last bark draught which I took, it was stronger than in any thing I have ever perceived it—and gave me exceeding great pain in my stomach, and vomited me very much:—"The prisoner said, "the vomiting was owing to drinking barley-water too soon after your draught." "No, (says he) I was sick before I took it, in order to make it come up the easier." I had hitherto kept my suspicions to myself.—* * *

* The prisoner.

Before you go on I beg, Sir, you will explain whether, in your judgment, the brassy taste was in the mouth, or in the liquor? Always in the liquor. He never complained of any brassy taste till he drank, and then he complained that always, after he had drank, his mouth was drawn up as if he had a halfpenny in it; that was his expression. — If the taste had been in the mouth, how would it have been after drinking? I should rather think it would have been better after drinking; *I should not imagine* it would appear worse. — Do you know whether the brassy taste preceded the salivation or not; I mean from his account? From the 4th of June to the 14th, all that space of time when he had no salivation, it was when he drank that he complained of that brassy taste, previous to the salivation.

Will you please to describe the nature of corrosive sublimate, for the information of the jury? It is the roughest, and most severe preparation of mercury that we know, and taken in substance, in the smallest quantity, even to the value of two or three grains, it will certainly kill by its action on the stomach. It is given in many medicines; a small solution of it, half a grain in a dose, dissolved in spirit. — What colour is it? Quite transparent; you may make a solution of any strength you please, so that a few drops of it shall contain a very strong dose, and that quite transparent; you may dissolve it in water. * * *

* * * I was going to observe, my Lord, that I kept my suspicions to myself; but upon Saturday, the 17th, as I was passing through Carshalton, *Lady Mead* stopped me, and asked me how her brother did. Before I could answer her, she said they are poisoning my brother, they are giving him sublimate. I did not know how she came by that information. — *Court.* — You must not repeat what she said; the conversation between you and *Lady Mead* is not evidence. — *Q.* Did you declare your suspicions at that time to *Lady M.*? No; I told *Lady M.* it was a very extraordinary affair, I did not know what to make of it; but I kept my suspicions to myself. * * * I went to *Mr. Serjeant Hawkins*: I related every circumstance of the affair to him, and desired his opinion. — (*Mr. Cor.*, counsel for the prisoner. — You must not mention the opinion of *Mr. Hawkins*, that is not evidence.) — Upon Tuesday I visited him again; I found his salivation running high. I desired him still to observe the same attention to his liquors; to wash his mouth, and if he perceived any thing brassy, still to preserve what remained for me to examine. Upon Tuesday, I asked him whether he perceived any more of the brassy taste in his liquors? He answered no. I found his salivation running to a very dangerous height; the sloughs were becoming very deep, and I desired I might have a surgeon from London, to see him with me. He desired me to name any one I thought proper, and he would send for him. I told him that possibly those I might name might be engaged, and as it was a thing of consequence, I would take a post chaise, and go to town immediately; I would call upon every eminent man I could think of till I could find one, and bring him with me. I called upon *Mr. Hawkins*, *Mr. Bromfield*, and *Mr. Adair*. *Mr. A.* was at home, but could not go: the other gentlemen were out. I called upon *Mr. Young*, surgeon to St. Bartholomew's Hospital, who was formerly a surgeon to Kingsland Lock-Hospital, where patients are continually under a mercurial course. I thought I could not meet with a man of greater eminence, or more conversant with those cases than himself, and I took him down with me. * * * Before I set out, I asked *Mr. Scawen* whether he should know the particular taste he had

so often complained of, if any thing that had it was given him? He said it was so remarkable, that he could not possibly be mistaken in it—I brought *Mr. Young* with me; I acquainted him with every circumstance of the affair as we came down. I brought with me a small solution of corrosive sublimate in my pocket. As soon as we came to the door the prisoner at the bar met us. I turned her and *Mr. Young* into one parlour, while I went to *Mr. Scawen* in the other. Immediately as I came in, I took out my bottle, touched his tongue with this small solution of sublimate, and asked if that was the taste he had complained of. “Aye,” said he, “that is the taste, but not near so strong as that I had in my liquors.” It was mixed at the rate of about one grain to a quart of water in that solution. I then desired the prisoner might not be suffered to come into the room to *Mr. Young* and me. I had one grain in an ounce phial of the solution of the spirit, and I took a tea-cupful of water at *Mr. Scawen*’s house. I dropped twenty drops into the water in the tea-cup; I cannot speak to the quantity exactly, but as near as I can conjecture, it was about one grain to a quart—it could not be more. *Mr. Y.* was then called in, and I related the whole history of the case to him, in the presence of *Mr. Scawen*, desiring *Mr. S.* to rectify any mistake I might commit in the narrative. *Mr. S.* said every thing was as I had represented it. I then asked *Mr. Young* whether his opinion was this salivation was produced by mercury or not? He said it was his opinion that it certainly was. Whether it was produced by the medicine that had been taken three months before, which produced a salivation, and from which he was free about six weeks, or from mercury newly administered: he said he was fully persuaded it was from mercury administered in his gruels from time to time. We then thought it advisable that *Mr. S.* should be separated from the people about him, and he was accordingly removed to my house. This is all I know relating to the medicine. He remained there until his death, which happened about nineteen days after. * *

Court.—What do you think was the cause of his death? Did he die a natural death? No, I am firmly persuaded that he died of a salivation produced by mercury.—Was his body opened? No, it was impossible to find any thing in his stomach at such a distance of time after taking mercury; for from the last bark draught to his death was twenty days. * * * *Court.*—Did he complain of that brassy taste after he was at your house? Never. * * *

Court.—Did the salivation produce a mortification? [In reply, the witness related the progress of the salivation and of the sloughs.]—

Court.—So it turned to a mortification? Yes, my Lord.—Do you recollect any thing else? [After describing the offensiveness of the apartment from the state of the patient’s mouth, he went on.]—The salivation was decreasing every day; I had the greatest hopes of his recovery that week; but a constitution broke down, with age and infirmities, was ill able to bear such a vast evacuation as he had had for a fortnight together, under a continued want of sleep. * *

* * * * At length putrid sweats and a purging carried him off. He was from the 20th of June to the 30th, well in every respect except in his mouth; every thing he took agreed with him; *he had great strength**; none of those symptoms which a mortification from another cause would produce. * *

* Yet this witness had just described him as *broke down with age and infirmities.*

[Evidence was here given, that an ulceration round the eyes had been benefited by the first salivation; respecting the appearance of the second, the following was the course of examination.]

How long was it possible for the mercury to have been administered antecedent to that? You may administer mercury in small quantities for a twelvemonth together, which may occasion a hectic heat, without producing any ulcers in the mouth: it was that way administered in the affair of the *Countess of Soissons*, who was tried at Paris for poisoning, at the end of the last century. It was this medicine, given in such small quantities as to cause no sensible operation but a hectic fever, and that fever in time will be fatal.—You gave your opinion, I understood, that the first salivation was at an end? I am satisfied, even supposing there had been a chemical preparation of mercury in the quack medicine, the quantity must have been small, because it produced no inconvenience in the stomach of an old man of seventy.—*Court.* Have you ever analysed that medicine? I have never analysed it myself, but it has been analysed*.

Cross-examined.

Pray how long had you known the deceased *Mr. Scawen* before his death? About fifty years.—How long might you have attended him in any kind of illness? I believe fourteen, fifteen, or sixteen years.—He had the misfortune of an issue or ulcer in his arm, had he not? Yes.—How long had you been acquainted with that issue? He had told me of it, that his issue had spread in his arm; but he never consulted me about that ulcer till the 4th: he has told me of it; it was a thing he never thought worth his while to shew me: he never asked me to see it.—What passed with regard to the ulcer, before or after he was removed to your house? With regard to that, previous to being moved to my house, and after, he had continued the decoction of sarsaparilla for a month, the ulcer contracted, and had rather a fairer appearance: he had a better use of his limbs than he had when he came to my house; the ulcer was much in the state it was when I saw it the 2d of June; the discharge was prodigious, a nasty fetid discharge; it was dressed every twelve hours, and the dressing would leave such a stench in the room, when he was gone out of it, that it was hardly bearable. In proportion to the progress of the salivation, the ulcer put on a vivid appearance, and it discharged a thick white matter, not more than one might expect from such a sore: it contracted and grew smooth.

When his mouth was getting better, his ulcer continued to mend daily, and the salivation would, if he could have weathered it out, have cured the ulcer.—You think this ulcer originated from a venereal complaint? It did: it kept spreading for a great many years. I would have put him under a course of mercury for it, many years ago, but he said he had such an aversion to mercury that he would not try it.

* Whether a witness is entitled to give testimony as to the composition of a medicinal preparation that he has not himself analysed, upon the report of others, is one of the exceptions to the force of *derived experience* that one would be inclined to admit.

Are you pretty correct in what you say, relative to her expression that he took nothing but from her hands? I am very clear she said 'that was impossible;' * * * * * I shall be obliged to you, if you can, to recollect the particular words she made use of? To the best of my remembrance, it was the very words. I have been very particular; I have used his words whenever I could. I have not only used words to that effect, for I have made memorandums. I was apprehensive how this affair would end, and I made memorandums from time to time as I went on. * * * * * Have you the memorandum by you? I have in my pocket a paper I transcribed from it.—Have you the paper upon which you originally wrote it? I don't know whether I have not got it at home. I can take my oath I transcribed literally what I made my memorandums on, into one paper, to collect my evidence together. * * * * *

I wish you would be more particular with regard to this brassy taste; I understand corrosive sublimate will produce a brassy taste? Yes.—Are there not many other things besides corrosive sublimate that will produce a brassy taste? * * * * * Liquors boiled in a brassy vessel, or a copper vessel, not well tinned; and there are a thousand things that would do it: vitriol and copperas would? Certainly.—

* * * * * When you found the salivation arising, after he was removed to your house, did you call in any assistance? I pressed it over and over again: * * * * *

it was my desire, and yet nobody was consulted; * * * * * it could be of very little advantage if any body else had just called in, when a person that has had the experience that I have had in salivations attended; for I will say, as I am called upon to answer this question, in the whole course of my practice, which has been very extensive, I never lost a single patient in a salivation in my life; therefore, I must have some judgment of it.—Then you think that this second salivation must have been produced from the introduction of this second course of mercury; that you cannot be mistaken in? I think I cannot be mistaken in it.—You think you cannot be mistaken? I have not a doubt about it myself; I never saw a second salivation arise at that distance from a first salivation: I have seen, frequently, in the course of practice, and it is well known, that when mercury has been admitted into the constitution, it will not only make its way out at the mouth, but through every pore of the skin; but upon a check of perspiration, the mouth will grow sore. * * * *

I have seen many salivations, where, for prudential reasons, it has been denied that mercury has been given. *

* * * * * Was you present when the coroner was sent for? I saw the coroner, I was examined by him.—Was there no desire that the body might be opened? Not that I remember. * * * *

I am to understand that if the body had been opened, it would have been impossible to have found out any thing of this matter by the effect upon the stomach, as the mercury, if it was administered, was taken so many days before the death? Certainly.—Have you ever known any instances, in charges of poison, where the body has not been opened? I have known very few; it does not fall in my line.—I cannot misunderstand you as to that latter part*; you are of opinion, if the body had been opened, it would have led to no

* I must confess it does not appear very evident to me what the meaning of the witness is—that opening bodies does not fall in the line

discovery? Certainly, I have no doubt of that. * * *
 A salivation in itself is not the natural means of producing death, but is the consequence of administering mercury? Certainly; it is no uncommon thing for persons to die in the hospital of mortifications. In the earliest part of my life we were not so well acquainted with mercury as we are now.—But, by your superior skill in administering it, you could prevent those bad effects that produce death? I and many others, for I do not pretend to any uncommon abilities: I have had great experience. * * * Are you acquainted with *Norton's* or *Maredant's* drops? No; I am not acquainted with them so as to know that there is mercury in them. * * * I have heard there is mercury in them.

[In the remaining depositions, I shall notice that chiefly which relates to a repetition of salivation, without repetition of mercury.]

The next witness was *Mr. Robert Young*, and the last question put to him in his examination on chief was,

Be so good as give us your opinion, whether a second salivation could come on from mercury administered at the distance of two months after the first had been cured. Did you ever know an instance of that in your practice? Never, that a salivation has come on again without fresh mercury.

Cross-examined.—(After a considerable number of questions.)—Does not that operation of the corrosive sublimate upon the stomach and bowels which brings on death, leave traces in the inside that are visible to the eye upon dissection? If the stomach had been affected, there would have been symptoms of it; nausea, vomiting, and pain would take place, but that was not the case with *Mr. Scawen*.—I wish for a moment you and I could forget *Mr. Scawen*; I am not talking of *Mr. Scawen*: I am asking information of a man very able to give it, and I am sure very readily will give it. * * *

When a person dies from the consequences of corrosive sublimate, do you, or do you not, think it necessary that the body should be opened to see whether these traces are there or not? You do not wish I should refer to the case of *Mr. Scawen*.—No, but in general? I think it would be necessary. * * * Have you known in your practice, that where a person, from a hectic or a scorbutic habit of body, has his blood very much dissolved, and in consequence of that habit of body, or from any other cause, mercury has been given to him to occasion a salivation, whether, after salivation has subsided, that without any other introduction of mercury, the salivation has gone on, or proceeded again? Never.—Do you think it is impossible, that when a person has once taken mercury to occasion a salivation, that, at the distance of six weeks or two months, by no cause, the salivation can be returned, but by a fresh introduction of mercury? I judge that to be so.—Was that the opinion of *Dr. Mead*? It is my opinion.—
 * * *

of a surgeon's duty, is inadmissible. I presume the allusion to be, that the direction to open them for judiciary satisfaction, is rather the business of the coroner than of the surgeon.

Dr. Saunders sworn.—You are by profession a physician? Yes.—Have you been long in practice? About nine years.—Are you acquainted with the use of mercurials, and their effects? Yes, in common with the use of other remedies.

* * * Nothing will salivate but mercury, will it? I believe no medicine taken internally will salivate but mercury; but I believe that a salivation does frequently arise from other causes, as a symptom of other diseases.

* * * * * *Court.* Mention what other distempers will produce a salivation? In the first place, I would observe that a salivation may arise from various causes, one of which is a paralytic state, a palsy in those parts which will produce frequently involuntary discharge of saliva, or a salivation.—*Court.* Old people have frequently a relaxation of the throat, that they cannot swallow their spittle? They call them drivellers.

* * * A salivation has been supposed; I do not know whether I am to swear merely to matter of fact, which falls within my own cognizance, or to opinions founded upon the observations of others.

* * * When extraordinary facts do occur, it naturally leads upon my side to an inquiry after truth, and I find that such facts have been attended to and believed by others; to this purpose, that a certain putrid, (I am sorry to use terms of art) a certain scorbutic, putrid temperament of body, will occasionally put on appearances of inflammation, ulcers and sloughing in the mouth, that would lead one, at first sight, to suppose such appearances arose from mercury.—*Court.* And this may appear without mercury? Yes; notwithstanding I would wish to be understood, that I believe there is no one article in the *materia medica*, capable of producing that effect but mercury; I hope I do not appear to be inconsistent in my opinion.—*Court.* No, not at all.

* * * On his cross-examination, *Dr. Saunders* was asked—Have you ever known an instance in which salivation has returned to a person after that salivation had once abated? Yes.—Please to inform his lordship and the jury, what you know in that respect? I have frequently known, that after a salivation to all appearance has stopped, it has returned a second time, without the person having had recourse to mercury, with a degree of violence: this has not only fallen within my own observation, but I believe it to be a fact, from the undoubted and unquestionable authority of others.—After what length of time may you observe this second return of salivation, from the same cause? I cannot say positively.—Four or five months? No, not so many months as that has fallen under my own observation.—Whether mercury will not lie in the body a considerable length of time, and shew itself afterwards? Certainly.—You cannot tell how long? No.

Dr. Saunders stated that he understood *Maredant's* drops contained mercury; and a servant deposed to *Mr. Scamen* taking medicine out of a certain bottle which coloured the teaspoon reddish.

Dr. Higgins gave it as his opinion, that there was no mercury in the rheumatic tincture that had been purchased for *Mr. Scamen*—and in his cross-examination admitted the return of salivation without an introduction of fresh mercury; but he knew it only from the experience of others, not having seen it himself.

Mr. Godfrey, the chemist, analysed the medicine, and found no mercury in it.—On his cross-examination, being asked as to the manner in which he made his analysis, he said, “I have brought with me the composition, the medicine, and all its constituent parts; the method I made use of; every thing is here to give satisfaction: I have the vessels also; they are very small.”

Mr. Cochrane's journeyman being examined as to the accuracy with which he had made up the draughts*, underwent the following cross-examination:—

“I believe with the utmost care there may be some mistake in the bottles; did you never know of such a thing? No, and to be more particular, I always taste the medicines before I send them out.—Do you taste every medicine your master orders you to mix and put in phials? Yes, Sir.—Then, if your master has a good business, you would be sick before night? No, Sir, I am not; I am pretty well used to it.—

FOR THE PRISONER.

Mr. Bromfield sworn.—How long have you been in the profession of a surgeon? Near forty years.—Whether your practice has not been very extensive during that forty years? It has.—Have not you had frequent occasions to observe the effects of mercury upon salivated persons? For twenty years last past I have given my particular attention to it, being surgeon to an hospital where no other than venereal patients are admitted.—What is the name of that hospital? The Lock Hospital, near Hyde Park Corner. If I deliver any thing that the gentlemen of the jury do not understand, I beg they will inform me, and I will most readily explain any thing, as far as is in my power.—Whether, in your experience of salivated persons, a salivation once apparently cured may not return again, and make its appearance afterwards, at some distance of time? Cases of this kind are too frequent in hospitals to make it a case in point only. I have known patients who have been reported as proper to be discharged the next court day, the salivation having entirely subsided for some time; yet the same symptoms of an approaching salivation have returned with extreme great violence, even so much, as in some instances to produce a mortification in the mouth, which sometimes ended in death; this has happened not once only, but there have been numbers of instances where the spitting has returned—I might say a hundred. * * * At what distance of time may that salivation return? It has been extremely different with different people. I have known a case that possibly will hardly be credited. I was consulted once by a person, in my private practice, who complained of a periodical salivation, at the interval of a month or six weeks.—For how long? I think the patient said for nearly a year, even with all the assistance of art to get rid of the mercury†; from whence I am of opinion that something in the constitution, or medicines given to invigorate the blood, may revive the power of the mercury that remained in the habit, and produce the same symptoms as

* Alluded to in the examination of *Mr. Cochrane*.

† See Principles, &c. pp. 118, 556.

before*.—Then, Sir, your opinion is, that mercury, when once it is in the blood, though the appearance of salivation may be gone off, may, upon any stir, produce a second salivation? I speak of the *possibility* of it, but not as the *usual* consequence of mercury having been taken, but where mercury is given in a scorbutic habit of body, and the mouth has been greatly excoriated. I must take this opportunity, my Lord, of observing, that great stress has been laid upon the fœtor, as characteristic of mercury having been given. I do take upon me to say, and every man of common sense will naturally allow, that wherever the part is mortified, that is, where the circulation is totally interrupted, it is impossible but that it must be offensive, and sloughs being mortified parts, the smell must be the same, let the cause be what it may†. *

I wish you would give your general opinion, as you have heard from *Mr. Sanxay*, of the state of *Mr. Scawen's* health; give your opinion if you can, what was the cause of his death? Clearly, the mortification of his mouth; but from whence this arose it is impossible for me to say. * * * * * I am led to believe that the quack

medicines he took were certainly mercurial. * * * * * You have been told, that in a weak constitution, where the preparation of mercury is extremely small, and there is not strength of constitution sufficient to throw it off, that upon taking stimulating medicines, that power that is in the constitution being raised capable of throwing the mercury into action again, a salivation has been produced, at a distant time from taking it. * * * * *

I should be glad to hear your observations upon the brassy taste? I have observed, so has every man that has practised physic or surgery, that people that have that kind of putridity in their constitution, without any medicine being taken whatever, will frequently complain of a disagreeable, nasty, brackish taste. * * * * *

(Cross-examined.) Do you apprehend that this salivation was occasioned by mercury? From the account given, I should think it was.—Can people of skill in the profession see whether it was made by mercury or not? I should think upon the first appearance it might, but in the latter part, when sloughs are formed, at the time *Mr. Young* saw it, no person can take upon him to say from what cause they arose.—If a person meant to poison another by a large quantity, it would be discovered immediately? Yes, very soon.—But suppose a person meant to have it concealed, and to make it a slow poison, they would not go that way to work? Certainly not; but that shews a great deal of knowledge and art together.— * * * * *

I ask you now for your judgment and experience—I don't ask what has been said by other people—at what distance of time afterwards have you known a salivation to rise again after being purged off? I cannot charge my memory exactly with that, but the thing has happened to people that have been in the

* As far as this gentleman goes with cases and matters of fact, we may credit him advantageously. This little piece of hypothesis might as well have been left out of his evidence. I have retained it to shew how irrelevant such digressions appear on occasions of this nature.

† We cannot subscribe implicitly to this. The smell from mercurial, and that from gangrenous sloughs, is not the same,

hospital three months.—

The question was asked you, whether you ever knew an instance, out of the hospital, of a salivation returning after two months: your experience has been chiefly in the hospital? Yes, but I have had private patients too, under the same circumstances.

Dr. Richard Brocklesby sworn.—It was said by *Mr. Sanxay*, that a salivation would not arise from any mercurial quack medicine that was taken three months before; will you be so obliging as to inform my lord and the jury, whether you confirm that opinion or not? I do not know the effect of all quack medicines, but I know the effect of many mercurial medicines taken, when prepared in the most artificial manner, that for the first month they may not have any effect but changing the mode of the mercurial preparation; a hundredth part of the mercurial, in another form, may soon have the desired effect. I have in my hand the best authority, in which I will join; I hold it to be respectable in the highest degree; I agree in point of the general principle in it, that repeated doses of crude mercury have in some cases, even a considerable time after they have been taken, excited their full force, and thrown off the disorder by salivation. I remember two accidents of this kind.—*Court.* You must not read it: that is not regular. A. It is *Dr. Mead's* Treatise upon Poisons which I hold in my hands.

The evidence was rather hypothetical, or generally explanatory of the witness's opinions respecting the action of mercury, than to the point of a spontaneous renewal of salivation.

The evidence of *Mr. Howard* went fully to establish the recurrence of this effect, without a renewal of mercury. He spoke of "fifty instances where patients have been turned out of the Lock Hospital, without any kind of salivation; and upon some sudden change in the constitution, from a cold or some other cause, they have been as bad again as while they were under a course of mercury."

The prisoner was acquitted, on the grounds that mercury had been introduced into the deceased's system by the quack medicine—that the brassy taste might have been owing to various causes—and that the second, and fatal salivation, had arisen from the mercury originally taken, in the aforesaid remedy.

SULPHATE OF IRON.

Case of WILLIAM RICHARDSON, indicted for administering Copperas to Two Women. Chelmsford, March 14, 1822.*

Although a perfect stranger to the parties interested in this unfortunate specimen of evidence, I have never looked at the

* From the Morning Post.

case without regret; but it offers an occasion of inculcating a very important and useful lesson on the necessity for being guarded, ere proceeding to answer questions in court.

The women alluded to had drunk two or three cups of tea, which tasted bitter, and in the evening were taken ill with a violent vomiting. Next day their tea was still bitter, and some copperas was found in a plate within the house. One of the women remained sickly for about a month afterwards.

Mr. Jessop (counsel for the prisoner) urged the propriety of establishing that copperas was "a deadly poison," as laid in the indictment. *Mr. Clift*, a chemist of Chelmsford, gave it as his opinion, that it was not, properly speaking, a *deadly poison*, for the stomach would reject a dose sufficient to produce death before it would have that effect. Two ounces, if dissolved in liquid, and retained in the stomach, might produce very serious consequences, but he was not sure it would occasion death.

Dr. John Badeley, a physician of Chelmsford, gave it as his opinion, that two drachms of copperas would produce death.

On his cross-examination, he admitted he was confounding verdigris with copperas. He was ignorant that copper did not enter into the composition of copperas*.

SULPHURIC ACID.

Case of FRANCES CLARKE, tried for administering Oil of Vitriol to her Child. Exeter, August, 1822.

Several witnesses described the child to have been three weeks' old, and healthy. Some of them observed it crying, and a liquid running from its mouth. The mouth and nose were acted on by the acid, the back part of the former and the throat were purple. The clothes also, where the fluid had touched them, were discoloured, and their texture was destroyed — as well as the prisoner's apron, with which she wiped the child's mouth. One of the witnesses touched a part of the clothes that seemed bloody with her finger, and burnt her tongue on applying it there. She also stated, that she had used oil of vitriol for the toothach when a young woman, and that it had burnt all the teeth out of her head.

Thomas Rowe, surgeon at Buckfastleigh, saw the child, and

* For the very injudicious and irrelevant letter of *Dr. Pearson* on the occasion, I refer to the Principles, page 557. The mistake does not appear to have been between sulphate of iron and sulphate of copper, but between *copperas* and *verdigris* — which latter never was called either vitriol or copperas,

described its appearance to have been that of one strangled*. The mouth was burnt and excoriated, and some white liquid was running from it. He ascribed the death to suffocation, through swelling of the throat.

(Cross-examined.) A person could not know oil of vitriol from any other corrosive acid by the taste†; he himself could not, perhaps a chemist could. If oil of vitriol were applied to a person's mouth, thinks suffocation is not the only mode by which it would operate: it would dissolve the coats of the stomach‡; but it might operate both ways, and produce mortification, or such general inflammation as would cause death.

Nicholas Churchill, another surgeon of the same place, described the whole surface of the child's body to be livid, and the surface of the mouth destroyed by strong mineral acid. He explained the discolorations produced on the clothes, and gave it as his opinion, that a person might distinguish the oil of vitriol from other acids. Thinks the child died from inflammation — causing swelling and suffocation, excited by the oil of vitriol.

(Cross-examined.) If oil of vitriol were poured suddenly into the mouth, it is possible, but not probable, that it would find its way into the stomach. The throat would contract. If it got to the stomach, it would not cause death so suddenly as inflammation of the throat and suffocation would do. It would excite vomiting; but, as far as he saw, the child did not vomit.

The child lived twenty-two hours. The woman had been twice tried before for the same offence, and the indictment was now objected to.

* There used, perhaps, to be greater looseness in the use of the term *strangled* than our modern terminology will sanction. It was sometimes confounded improperly with *suffocated* — and this, perhaps, explains the utter variance at which the statement of the witness would otherwise appear to be, even with itself.

† If we are to receive the term "corrosive acid" as applicable in the common sense to the three mineral acids long known as such, to taste which it is essentially requisite to dilute them greatly, I think the statement erroneous — at least as far as regards a person otherwise conversant with their distinctive qualities.

‡ That is, if applied to them, as well as to the mouth; but not if applied to the latter only.

LAUREL-WATER.

Case of Mr. DONELLAN, tried for the Murder of Sir T. A. BOUGHTON, BART. Warwick, March 30th, 1781.*

Mr. Thomas Powell sworn. Of what profession are you? An apothecary.—When did *Sir Theodosius* die? On the 30th of August.—In what state of health was he when you first attended him? He had got a venereal complaint upon him.—To what degree? Not very high, rather slight, a fresh complaint.—Did you give him any medicine for that complaint? I gave him some cooling physic.—How long might you continue that? For about three weeks.—Did you then cease to give him physic? Yes.—For how long? More than a fortnight.—How came you afterwards to repeat the medicines? Because he had a swelling in his *share*, his groin.—To what degree did that arise? To a very small one, it did not rise above the skin.—Did you give him any more medicines? Yes, four doses; two of manna and salts, the other two of rhubarb and jalap.—Was any thing else given to *Sir T. B.*? Nothing else, but an embrocation to wash himself with.—When did you send *Sir T.* the last draught? On a Tuesday, the 29th of August.—By whom did you send them? *Samuel Frost*.—How long before you sent *Sir T.* this last draught had you seen him? On the Tuesday afternoon, the same day I sent the last, I saw him.—In what state of health did he then appear? In great spirits and good health.—How long before that had you seen him? The Sunday or the Saturday before.—In what state of health did he then appear? A very good state of health.—Did you ask him how the first of these draughts agreed with him? He told me that that which he took on the Saturday made him sick.—You say you saw him on Sunday or Saturday, and he appeared to you in good health, and likewise saw him again on the Tuesday? Yes.—You before told us you sent this last draught by *Frost*; have you one of the same kind about you? I have [*produces a draught in a two-ounce phial*].—Was it a phial of the same size as this, and filled with the same ingredients? Yes.—What are those ingredients? Rhubarb and jalap, spirits of lavender, nutmeg-water, and simple syrup.—I see you have another draught in your hand? Yes.—What is that? The same, except the simple water; there is the same quantity of rhubarb and jalap.—What is added to that? Laurel-water. * * *

(Cross-examined.) Describe exactly the proportion of the several ingredients? Fifteen grains of each of rhubarb and jalap; spirits of lavender, twenty drops; nutmeg-water, two drachms; two drachms of simple syrup; and an ounce and a half of simple water.—Then there are two ounces only of liquor, except the twenty drops of lavender? Yes.—You had given one of these draughts on the Monday? Yes.—What effect had the first medicine you gave him? It purged him very well, and agreed with him very well; he had many stools.—You say that *Mr. Donellan* told you that *Sir T.* died of convulsions, and that was all the conversation about it? Yes.—Did it not occur to

* A good account of this deeply interesting trial (besides the folio report) will be found in *Howel's State Trials*.

you, as a physical man, to inquire when these convulsions commenced, and when *Sir T.* died? The convulsions took place soon after the draught was taken.—What idea have you of *soon*? A quarter of an hour, or sooner.—Do you know for certain? I do not.—Why did you not inquire? I did inquire.—You saw *Lady B.*? Yes.—Had you no conversation with her? Yes; she said he was convulsed soon after he took the medicine.—Did not you inquire how soon? He was convulsed almost immediately.

Dr. Rattray sworn.—You are, I believe, a physician at *Coventry*? I am.—Do you remember, on the 4th of September last, receiving any message from any person, and from whom, to come to *Lawford Hall*? On the 4th of September, in the afternoon, I received an anonymous note, I mean a note not signed by any person, desiring me (I forget the particular phrase used), but it was to go to *Lawford Hall*, in order to open the body of *Sir T. Boughton*.—Have you got that note? No, I did not preserve it; as it was not signed, I conceived it immaterial. The note imported that I was likewise to bring *Dr. Wilmer* with me; by which I understood *Mr. Wilmer**, the surgeon. *Mr. W.* happened to be out of town that afternoon. As soon as I could find him, and bring him back to *Coventry*, we set out and went there together. * * * *

Did you use any expressions of any sort, at the time of your seeing the body, to *Capt. Donellan*? I went into the room, and looked at the body several times, and came out to *Mr. Wilmer*; he seemed to think it would answer no purpose to open the body at that time; and as we asked *Capt. Donellan* “for what purpose it was to be opened?” and he said it was for the satisfaction of the family, we thought it at so late a period, and it being only for that purpose, that it was of no use: therefore we waived it.—Had *Capt. D.* said the opening was for the satisfaction of the family? Yes, he told *Mr. Wilmer* so, and I think when I went up the same speech was repeated to me.—Did he mention any other purpose for which the body was to be opened, except the satisfaction of the family? None to me, that I recollect.—Did he at that time intimate to you any suspicion of poison? No, nothing of the sort.—In consequence of this, you did not, in fact, open the body? We did not open the body.—How soon after this was it that you was again sent for upon this melancholy occasion? On the 9th of September, I think it was on a Saturday.—Who did you receive the message from at that time? I really do not know; I received a message by some strange round-about way, in consequence of which I went, but I don’t know who sent it. *Mr. Wilmer* and I went in company; we met *Mr. Bucknill*, *Mr. Powell* of *Rugby*, and *Mr. Snow* of *Southam*; those were all the physical people, I believe. *Mr. Bucknill* opened the body.—Where did you meet at that time? In the churchyard at *Newbold*.—The body had then been interred? It had been in the vault at *Newbold*, as I understood.—What passed at that time? We proceeded to the opening of the body as soon as we conveniently could, and inspected, as far as we were able, the appearances of the body.—What were the material appearances that struck you at that time? The material appear-

* It may be worth while to notice that, among the vulgar, in the provinces, the apothecary is universally called *Doctor*; while the physician is scrupulously designated *Mr.*, out of respect; the former being a familiar term, analogous to that of *parson*.

ances were, in the first place, the body appeared, upon a general view, swollen or distended a good deal; the face of a round figure extremely black, with the lips swelled and retracted, and shewing the gums; the teeth black, except a small white speck on one of the fore-teeth; the tongue protruding beyond the fore-teeth, and turning upwards towards the nose; the blackness descended upon the throat, gradually diminishing as it got towards the breast, and the body was spotted in many parts, but not very material. — * * * Were there any appearances upon the body sufficient to cause or confirm an opinion you may by and by give upon the subject? We proceeded to open the body, and, in dissecting the skin, the fat appeared in a dissolving state, a little watery; in getting into the cavity of the belly, the bowels in the lower belly seemed to put on the appearance of inflammation. I choose to make use of the vulgar term *appearance*, in order to convey a general idea of the appearance things in that state generally put on. — Was it so with the stomach too? Yes, the orifices of the stomach, and the small arch of the stomach; the heart, upon opening the pericardium, the membrane which incloses it, appeared to be in a natural state; the lungs appeared what I call suffused with blood, looking red, and spotted in many places with black specks; and on the back part the blood had settled in a deep red colour, almost approaching to purple; the diaphragm was in the same state, and in general upon the depending surfaces of the body the blood was settled in the like manner; the kidneys appeared black as tinder, and the liver much in the same state. These, I think, are most of the appearances I need mention upon the present occasion. — Have you heard the evidence of *Mr. Powell*, the apothecary? I have. — And have you heard, too, the evidence of *Lady Boughton*? I have. — Now, from the evidence of *Mr. Powell* and *Lady Boughton*, independent of appearances, for I would have you forget them for the present instant, what was, in your judgment, the occasion of *Sir T. B.*'s death? Independent of the appearances of the body, I am of opinion that the draught, in consequence of the symptoms that succeeded the swallowing of it, as described by *Lady B.*, was poison, and the immediate cause of his death. — Please to smell upon that bottle; what, in your judgment, is the noxious medicine in that bottle? I know the liquid well; it is a distillation of laurel-leaves, commonly called laurel-water. — You have heard *Mr. Powell's* account of the mixture he prepared for *Sir Theodosius Boughton*; was that mixture innocent or proper? In my opinion it was perfectly innocent. — You have said that, in your judgment, laurel-water is contained in this bottle? Yes. — Have you made any particular experiments upon the effects of laurel-water? I have, several. — You will please to relate the particular experiments you have made, and the appearances in consequence of those experiments? *Mr. Wilmer* and I made experiments together: our first experiment with laurel-water was on a middle-sized dog; I held his mouth open, and there was, I believe, nearly two ounces of laurel-water poured down his throat. I held the dog between my knees. In half a minute, as near as I can guess, he dropped dead to the ground, without any motion, except a tremulous motion once or twice of the lower jaw. The next animal on which I tried the laurel-water was in company with *Mr. Wilmer*. To an aged mare we gave, at repeated intervals out of a horn, I believe about a pint and a half of laurel-water. In about two minutes she was precipitated to the ground with her head under her, and then tumbled on her back, kicking violently: she afterwards lay without

kicking, but seemed convulsed, her eyes rolling about, rearing up her head, as if in agonies, gulping at her stomach, as if something lay there exceedingly offensive to her; and at that instant, and during the whole time she lived afterwards, heaving at the flanks in a most extraordinary manner, and at the end of fifteen minutes she expired. After this, in company with *Mr. Ewbank* of *Coventry*, I gave to a cat about a spoonful of laurel-water, which I had myself seen distilled; it was pale and limpid, as pure distilled water, and seemed very weak. The cat, though I believe she had not half the quantity I intended she should have taken, died in three minutes. — What quantity did you put down the cat's throat? About a spoonful, about half an ounce. At *Southam*, the beginning of this week, I gave, in presence of *Mr. Snow*, to another aged horse, about a pint of laurel-water, distilled by *Mr. Snow*. Upon his receiving into his stomach the first hornful, which was a small one, no bigger than we used in the former experiment, he dropped to the ground. — What was the quantity that horn held? I suppose three or four ounces. It was impossible to give the animal the whole of it; full half was spilt. I conceived it to be very strong, and desired *Mr. Snow* would give him no more at that time, in order to try the strength of it. The horse dropped; he endeavoured to raise himself, but could rise no further than by setting himself on his buttocks, like a dog. I perceived he had entirely lost the use of his hinder parts. We then gave him another hornful, which in its turn knocked him down very soon, and, at intervals, we gave him several hornful to the amount of above a pint in the whole, and at the end of twenty-eight minutes he expired, violently convulsed, groaning, his tongue lolling out of his mouth; and indeed the first horse's tongue had a very extraordinary appearance; for it darted backward and forward in the manner of a dart, but this horse lolled his tongue out, like a dog when running. In both the horses the artery in the neck beat much, even after the animal had ceased to breathe, except we call the motion of the lower jaw a kind of gasping breathing. I saw all the bodies opened, and in all of them there was a violent distension of the venous system, of the whole veins in the body, the stomach, bowels, lungs, and so on. The veins were distended and full of blood, the lungs appeared red and suffused. I said before, that I did not use the term *inflammation* in any other way than to convey the vulgar idea, the appearance of red colour given to any part by blood. The lungs suffused with blood, looking very red, and in the first horse it was of the colour of a deep pink; very different, I conceive, from the natural colour. — You have smelled to the bottle which has the laurel-water in it? do you know any thing in medicine that corresponds in smell with that mixture? I do not know any medicine that smells like it. — Does the smell described by *Lady Boughton*, something like bitter almonds, convey to you an idea of that mixture? It does; and I have given the laurel-water to many people to smell to, and they always described the smell to be something like bitter almonds. I do not exactly know how they expressed themselves, but they meant to say that. — In your judgment, is the quantity that one of these bottles contains of laurel-water sufficient to take away life from any human creature? In my opinion it is. — I have now got your opinion upon the subject, independent of any appearances you observed upon the body of *Sir T. B.*; now, are you, from these appearances, confirmed or otherwise in the opinion you have given? Confirmed in it, so far as, upon the viewing a body so

long after the death of the subject, one can be allowed to form a judgment upon such appearances.

(Cross-examined by *Mr. Neunham.*) If I do not misunderstand you, Doctor, the last account you gave in answer to the question, whether you are confirmed in this opinion by the appearances? you said yes, so far as you might be allowed to form an opinion, viewing the body so long after the death of the subject? Yes, so far as we may be allowed to form a judgment upon appearances so long after death.—By your putting it in that way, do you, or do you not, mean to say, that all judgment upon such a subject, in such a case, is unfounded? I cannot say that, because, from the analogy between the appearances in that body and those distinguishable in animals killed by the poison I have just mentioned, I think them so much alike, that I am rather confirmed in my opinion with respect to the operation of the draught.—Those bodies were instantaneously opened? Yes, so much so, that there was the peristaltic motion of the bowels upon their being pricked.—This was upon the eleventh day after *Sir Theodosius's* death? Yes.—What was the appearance of the body when you first went to Lawford Hall? At the first time I saw the body, what I did see of it was—the face was in the condition I have described, with a maggot crawling over its surface; it was black, as I have described, it was quite in the same state; in short, I saw no difference the last day, excepting that the maggot was not upon it then.—Were you, or not, offended by a violent stench as you approached the dead body? We were.—Had not putrefaction considerably taken place? I believe it had.—Did *Mr. Wilmer* observe the same appearances with you? Yes, I believe so; I have no reason to doubt it.—What was your reason at that time for not opening the body? I have just said, the body seemed to us to be in such a very disagreeable state, that we did not like to enter into the investigation of it, not knowing that any particular purpose was to be answered by it, except the satisfaction of the family.—At that time, was not you and *Mr. Wilmer* sent for, for the purpose of opening the body? Yes, it was so expressed in the note.—Was not your reason at that time, (whether you were erroneous in your judgment, or not, is another thing,) but was not your reason for declining opening the body, that you conceived the opening it could answer no useful purpose? At that time we were of that opinion.— * * * * * The next time you saw the body was on the 9th of September, which was the eleventh day after the death? I think so.—Does not putrefaction increase very much in the space of five or six days, in a hot summer? I should think it must certainly increase.—Was, or not, the body in a very high state of putrefaction when you saw it? Upon the shroud being removed, the body appeared to me much fairer than I expected; I expected to have seen it in a very black putrified state, but the external appearance was not quite so highly so as I expected.—You mentioned that the body was much swelled? It was swelled.—Appearing upon a gangrene, I suppose? It rather put on the appearance of gangrene.—I understand you have set your name to a description of certain appearances that met your eye when you examined the body; I mean your examination? I have, undoubtedly.—Did you, or did you not, concur with *Mr. Wilmer* as to the appearances of the body? In general we did.—You set your name to that examination? I did not set my name to any thing but my own examination.—Wherein the appearances are particularly

described? They are not particularly described; there is something said about the stomach and bowels.—For what purpose then did you attend there? I did not know that it was necessary before a coroner's jury to enter into the particulars; I was quite a novice in the business*.—Do you mean a novice in the mode of dissection? No, in the business before a coroner.—Did the account you set your name to, contain a true description of the appearances that met your eye upon the occasion? So far as they went it did.—Did you ever hear or know of any poison whatever occasioning any immediate external appearances on the human body? No, no immediate external appearances in the case of vegetable poisons, except what I have heard; but they have not fallen under my own knowledge.—So far for the external appearances: now I shall be glad to know, whether all the appearances you speak of in the face, the protuberance of the tongue, and the lips being swelled and retracted, whether those are not all signs of putrefaction? I really don't know that they are.—I do not mean to give you any offence, but I beg leave to ask, whether you have been much used to anatomical dissection? I have been, as far as persons not particularly intended for anatomical pursuits; I am not a professor of anatomy.—Did you ever attend the dissection of a human body that was poisoned, or suspected to have been poisoned? Never.—From the external appearances of the different parts of the body, you draw no kind of conclusion or inference, and form no opinion? No, I don't form any strong opinion from them.—How were the appearances when the cavity of the abdomen was opened? I have described them in general.—Not being an anatomical man, it has slipped my memory, will you please to repeat it? I believe I did not before mention the omentum or caul, that was suffused with blood of a brownish red; the stomach and bowels appeared in general red, which is vulgarly called an inflammation.—Might not that be owing to a transfusion of the blood? *Dr. Rattray.* From what cause? *Mr. Newnham.* From putrefaction.—*Dr. R.* Do you, by a transfusion of the blood, mean the passage of the blood from the arteries into the veins? *Mr. N.* Yes.—*Dr. R.* I cannot think it could arise from putrefaction.—*Q.* That is your opinion? It is.—Did you look at the stomach? Yes.—As *Sir Theodosius Boughton* is represented to have died in a few minutes after taking this medicine, did you, with correctness and attention, examine the stomach? The contents of the stomach were about a spoonful and a half, or a couple of ounces of a slimy reddish liquor, which I rubbed between my finger and thumb, and it contained no gritty substance that I could perceive.—Is it not usual to find some such quantity of liquor in the stomach? The stomach, after death, must contain something more or less, according to different circumstances.—You said the stomach, and the orifice of it, and the small arch of it, bore the appearance of inflammation; pray is not inflammation, and appearance of inflammation, much the same thing†? All that I have to say upon the present business is, I perhaps don't know the cause of inflammation; but there is an appearance of inflammation upon the stomach and bowels, owing to an injec-

* And the consequence of being a novice, or, as we ought perhaps now to term it, an *ignoramus*, has been a course of dissatisfaction with this gentleman's forensic conduct for nearly half a century.

† This is a question worthy of a master of subtleties, and fit to set at defiance the most able theorist.

tion of blood into the venous system—the veins being full of blood, put on a red appearance.—If you will not take upon you to say what is the cause, what are the signs of inflammation? An appearance of redness, sometimes, but not always, attended with pain, and sometimes throbbing.—Did you pursue your search through the bowels? No, I cannot say I did, nor did I think it in my power.—How far did you pursue your search in the stomach? We examined the contents of the stomach; we took the stomach out, but in taking it out a great part of the contents issued out of the bowels next to it*, and the smell was so offensive, I did not choose to enter into that matter.—Whether a pursuit or inquiry, from an inspection through the bowels, was not as likely to have led to a discovery of the cause of death as any other part of the body which you did examine? I do not believe a pursuit through the whole extent of the bowels could have led to any discovery in these circumstances.—Are not the bowels the seat of poison? When it passes in there, no doubt it affects the bowels.—Then why did not you examine into the contents of the bowels? I did not think it in the power of any one to examine into the contents of the bowels; their contents being so strong and disagreeable.—Whether you do not form your judgment upon the appearances? Not altogether; they corroborate my opinion upon the effect of the draught.—Did you, or did you not, know the contents of the draught *Mr. Powell* had prepared when you was examined before the coroner? Yes, I did.—And you knew from the account given you how long *Sir Theodosius Boughton* lived after he took that draught? I took my information from *Lady Boughton*.—Then, whether many reasons have not occurred, subsequent to that time, considerably to induce you to form your judgment that he died of arsenic? Not subsequent to that time; at that time I did think he died of arsenic, but I am now clear that I was mistaken as to the medicine: from the sensible qualities described by *Lady Boughton*, I believe it to be of that nature.—Did not you know at that time the symptoms described by *Lady Boughton*? I did.—Then was not your judgment at that time as ripe for information as it is now†? It is now, since I have received the information.—Whether you did not, after you heard *Lady Boughton* describe the symptoms, and after you saw the body opened, give it as your opinion that he died of arsenic? I have had such an opinion.—And have declared so? I did.—Was there or was there not, a large quantity of extravasated blood in the thorax? On each side the lungs there was.—About what quantity? I think not quite a pint on each side the right and left lobe of the lungs.—Would not the rupture of a blood-vessel occasion death? The rupture of a blood-vessel undoubtedly would have occasioned death; but it would not, in my apprehension, have been attended with the same appearances.—Might not a blood-vessel, in an effort to retch, be broken? I should conceive, that if, in an effort to retch, a blood-vessel of that magnitude had ruptured, he must have died immediately, without convulsions.—But supposing a person recovering from convulsions, for he is stated to be inclined to sleep? It is a case I am not supposing probable.—Is it possible? Every thing is possible under God.—Did you never hear of any person dying of an epilepsy, or of an apoplexy, with symptoms like those, being in convulsions? I do not think the symptoms described as having taken place in *Sir Theodosius Boughton*, are like to an epilepsy.—Nor an apoplexy? They were entirely, in

* From clumsy dissection.

† See the text above, p. 56.

my opinion, the effects of the draught.—Might not an epilepsy, or an apoplexy, be accompanied with those symptoms? I never saw either of them attended with an heaving at the stomach. —When respiration grows feeble, is it not a common case that the muscles of the throat are very much relaxed? All the effects that succeeded the draught, I believe, were the consequences of it; and if the muscles were relaxed, or foam proceeded from the mouth, they were in consequence of it.—Is it not commonly the case with persons who die of almost every disorder? Very often. —Are not the muscles of the throat instrumental in respiration? So far as to the passage of the air in and out.—Is it not a very common appearance a few minutes before death, when respiration grows feeble, for froth to issue from the mouth? No, not commonly. I have seen it in epilepsies.—What was your reason for supposing at one time that the deceased died of arsenic? Every man is mistaken now and then in his opinion, and that was my case; I am not ashamed to own a mistake. —Have you been very nice in your experiments; for instance, in the conveying the laurel-water into the animals? If there was any want of nicety, the subject had less of it than I intended.—When an animal, suppose a dog or cat, is striving to refuse a draught you are forcing into its mouth, whether it is not common for some part of the liquor to get into the lungs? If it did, it would make it cough, but be attended with no bad consequences unless it was poison.—Did you ever convey any poison immediately into the stomach? *Dr. Rattray.* Do you mean by perforation through the ribs? *Mr. Newnham.* Yes.—*Dr. Rattray.* I never have. —Did you ever convey any into the veins of an animal? I never have.—Did you observe or smell that liquor which came out of the stomach? I could not avoid smelling it.—Had it the same offensive smell? It in general had; one could not expect any smell but partaking of that general putrefaction of the body: but I had a particular taste in my mouth at that time, a kind of biting acrimony upon my tongue. And I have, in all the experiments I have made with laurel-water, always had the same taste, from breathing over the water; a biting upon my tongue, and sometimes a bitter taste upon the upper part of the fauces. —Did you impute it to that cause then? No; I imputed it to the volatile salts escaping the body.—Were not the volatile salts likely to occasion that? No; I complained to *Mr. Wilmer*, “I have a very odd taste in my mouth, my gums bleed.”—You attributed it to the volatility of the salts? At that time I could not account for it, but in my experiments afterwards with the laurel-water, effluvia of it constantly and uniformly produced the same kind of taste; there is a very volatile oil in it, I am confident.—Do not you understand that there cannot be any information at all obtained in consequence of dissecting animals which have been destroyed by laurel-water? I do not think that the operation of these sort of substances upon the inside of the stomach produces any violent appearances of redness, but in most of the animals I have seen, there have been small red spots inside, of the size of a shilling perhaps; but the effect, in the trials I have made, has been a driving the blood from the part of the body where it should be. I believe the effect of the poison is to empty the arteries in general, and push the blood into the veins; that is my opinion at present, so far as I have gone into the matter.—But you was mistaken at first, relative to forming an opinion that the death was occasioned by arsenic? Yes.

Mr. Balguy. You say that when the shroud came to be taken off the body, you found the body less offensive than you had expected?

Less black.—When you first saw the body, on the 4th of September, did you or not take the shroud off? We did not.—You saw nothing but the face? Nothing but the face.—If at that time *Captain Donellan* had insinuated to you any suspicion of poison, whether you would or not have taken the shroud from the body? I verily believe, had I known the tendency of the inquiry, I should have sat there for a month, rather than have left the body unopened.—Should you at that time, if the suspicion had been disclosed, have proceeded to open the body? I should have attended the opening of it.—*Mr. Newnham*. I understood you to say, that when the body was opened, the external appearances did not contribute in any way to your forming a judgment one way or other? Nobody would attempt to form a judgment upon the external appearances altogether.

Mr. Bradford Wilmer sworn.—You was sent for to Lawford-hall at the same time *Dr. Rattray* was? I was; I went there with *Dr. Rattray*.—When first you came there, did you see *Captain Donellan*? I did.—He desired us to walk into the parlour; after we had some refreshment, we were told that the coffin was unsoldered, and we were desired to walk up stairs.—Was any thing said to you at that time, as to the means by which *Sir Theodosius Boughton* had died? Not the least in the world.—Nothing said of poison? I never heard a word of poison.—When you did go up stairs, what part did you see of the corpse? Only the face.—We have learned from *Dr. Rattray*, that you did not proceed any farther; how happened that? The body was so extremely putrid, that I declared my opinion to *Dr. Rattray*, that the proposed inquiry could give no sort of information.—Supposing it had been communicated to you, that *Sir Theodosius Boughton* had died by poison, should you have been satisfied without opening it? I should then have opened the body at all events.—You did not then open the body? I certainly did not.—You afterwards did open it at the time *Dr. Rattray* has spoken of? I was present at the opening of the body by *Mr. Bucknill*.—Have you been employed in any experiments with *Dr. Rattray*? I have.—Without going into every particular of *Dr. Rattray's* account, do you and he concur in general as to the effect of that medicine? I wish you would be more particular in that question.—Do you agree with *Dr. Rattray*, in what he has said respecting those experiments at which you was present? I do in general; but as *Dr. Rattray* has not described the appearances which were visible upon the dissection of the horse, with your Lordship's permission, I will read my minutes.—“On the 20th of March, one ounce of the laurel-water was given to a young greyhound; while *Dr. Rattray* held the mouth open, I poured the water into the dog's throat; as soon as it was swallowed, the doctor released its head, to observe the effects of the poison, when, to our great surprise, he fell down upon his side, and without the least struggle, or any perceptible motion, (except what the doctor has explained about the dropping of the lower jaw,) expired. On the 22d of March, in the presence of *Sir William Wheeler*, a pint and a quarter of laurel-water was given to a mare, aged twenty-eight years. Within a minute from the time it was swallowed, she seemed affected; her flanks were observed to heave much, and a trembling seized her limbs; in two minutes she suddenly fell down upon her head, and in a short time after was very violently convulsed. The convulsions continued about five minutes, at the expiration of which time she laid still, but her breathing was very quick and laborious, and her eyes much affected with spasms. At this time four ounces more of the water were given her, after which

she seemed much weaker, but without any more return of convulsions; and in about fifteen minutes from the time of her first seizure, she expired." — After her first convulsion she was quieter? She was. — "Upon opening the abdomen, a strong smell of laurel-water was perceptible; the colon, one of the large intestines, was not altered from its usual appearance, but the small intestines appeared of a purple colour, and the veins were much distended with blood; the stomach contained some hay, mixed with laurel-water; its internal surface was not inflamed, except in a small degree, near the lower orifice of the stomach; the lungs appeared remarkably full of blood; the small vessels upon their surface being as visible as if they had been injected with red wax." — Whether you in general concur in sentiments with *Dr. Ratray*, as to the effect of laurel-water? *Mr. Wilmer*. Do you mean upon the human body, or upon brutes? *Mr. Wheeler*. Upon both? It has in four instances been fatal in the human body; I do not know it of my own knowledge, but from reading. — Have you any doubt of its being fatal? Not the least in the world. — Now, do you apprehend the quantity contained in that bottle is sufficient to take away life? I imagine one bottle of that size, full of laurel-water, would be sufficient to kill, in half an hour's time, any man in this court.

(Cross-examined.) Were there any symptoms in this case peculiarly different from the symptoms attending a case of epilepsy or apoplexy? The appearance of the body, in the putrid state in which it was when I had an opportunity of observing it, could give me no information to form an opinion upon, respecting the cause of the death. — Have you had any opportunities, in your own experience, of observing epilepsies? I have; they are of two kinds, either primary or symptomatic. It happens sometimes that, without the least previous notice, a man in the most perfect state of health, in the midst of pleasure, or engaged in business, as *Suetonius* says of *Julius Cæsar*, may, in a moment, be seized with the epilepsy, his senses will leave him, he will fall down, be convulsed, foam at the mouth, his tongue will be black, and he either may die or recover. As to the symptomatic epilepsy, I can speak from experience. A patient of mine had a violent pain and tumour in his finger; as soon as the pain, which gradually went up his arm, reached his armpit, he fell down epileptic and convulsed. But if, previous to an epilepsy, the patient heave very much at the stomach, and shew signs of sickness, I should conclude the cause of that epilepsy was in the stomach. — Epilepsies proceed from various causes? Numerous causes. — Will not the loss of blood occasion an epilepsy? I believe not. — What quantity of blood was there in the stomach? I did not measure it; I conclude about two pints: it lodged in the cavity of the thorax*. — Might not that occasion convulsions? I do not know; but if I might be allowed to reason from analogy, I should conclude it would; for in slaughtered animals, when the blood runs out from them in a full stream, they lie quiet: but they never die without convulsions. The loss of blood will evidently occasion convulsions. * * * *

Mr. Wheeler. From the appearances of the body, and after the evidence you have heard given, both by *Lady Boughton* and the other

* The vagueness of this language is too striking to require to be pointed out; it is singular that such loose statements should stand upon record as evidence. I presume that the lodgment took place in the course of dissection, upon the stomach being cut into.

witnesses, what do you attribute this gentleman's death to? After having heard *Lady Boughton's* evidence, and therefore being acquainted with the symptoms which preceded the death of *Sir Theodosius Boughton**, I am clearly of opinion, that his death was occasioned by a poisonous draught, administered to him by *Lady Boughton*, on the morning of his death.—*Court.* Is the heaving in the stomach or the belly, a circumstance which attends an epilepsy? It is not.

Dr. Ashe sworn.—You are a physician, and live at Birmingham? Yes.—You have heard the evidence that has been given? I have.—What, in your opinion, was the cause of the death of *Sir Theodosius Boughton*? I think he died in consequence of taking of that draught, after the taking of which, he was seized in so extraordinary a manner.—Mention the particular reasons you have for thinking so? It does not appear from any part of the evidence that has been given, that the late *Sir Theodosius Boughton* had any disease upon him of a nature either likely, or in a degree sufficient, to produce those violent consequences which happened to him; neither do I know in nature, any medicine, properly so called, which, administered in any dose, and in any form, could possibly produce the same effects. I know nothing but a poison speedy in its operation, that could be attended with such terrible consequences. As to the appearances of the body upon dissection, they were certainly, as far as could be collected at that distant period from the time of the death, and in such hot weather, similar to those appearances which are found in the bodies of animals that are killed by poisons collected from vegetable substances, not from animal ones.—Will you please to look at that phial? The vehicle of it is laurel-water.—Would that quantity be sufficient to cause death? I do not know how this is distilled, or how firm it may be; but I know it may be made in this quantity to destroy animal life in a few seconds. I do not know who distilled this, but I have made it frequently myself, and in such a degree of strength, as to destroy animal life in a few seconds; if it is distilled enough to collect the essential oil, a tea-spoonful of it would destroy animal life in a few seconds.—*Court.* If it was made on purpose? Certainly; I dare say as strong a poison might be made from bitter almonds as that.—Do you or not, from the evidence you have heard, believe *Sir Theodosius Boughton* died of poison? I do.—You are not to give your opinion from the evidence in general, but upon the symptoms those witnesses have described? By the symptoms those evidences have described, I am of opinion that *Sir Theodosius Boughton* died of poison.

Dr. Parsons sworn.—You are, I believe, a professor of anatomy in the University of Oxford? I am.—You have heard the symptoms attending the death of *Sir Theodosius Boughton*, described by the witnesses produced to-day? I have.—What, in your judgment, occasioned the death of *Sir Theodosius Boughton*? From the description of the state of the young baronet's health previous to his taking the second dose, which was supposed to be similar to that which he had taken two or three days before, and from the violent nervous symptoms that immediately followed the taking thereof, it is my opinion that he died in

* It is hardly sanctionable, that a medical man, especially on so important a point, should profess obtaining an acquaintance of so accurate a nature, with symptoms, from the oral description of any person not of the profession.

consequence of taking the second dose ; which, instead of being a composition of jalap and rhubarb only, proved to contain a poison, and of what nature that poison was, appears sufficiently from the description that *Lady Boughton* gives of its smell ; when she poured it out, in order to give it to her son, her ladyship said it smelt like the taste of bitter almonds, which particularly characterises the smell of laurel-water*. Perhaps it may not be improper to produce some laurel-water, for the jury to smell at, that they may judge how well it agrees with the description that *Lady Boughton* has given of the supposed physic. The violent nervous symptoms that came on, subsequent to his taking the second dose, took place so soon, and were so different from what attended the taking of the first, that undoubtedly they were caused by something it had in it, very different from the contents of the first, much more active, and, as it proved, more deleterious. Jalap sometimes disagrees with the stomach, and may produce sickness ; but with respect to *Sir Theodosius Boughton*, this medicine did not create any sickness when given the first time.—*Court.* Could all the ingredients in the medicine mentioned by *Mr. Powell*, produce in *Sir Theodosius Boughton* the effects described? No, I apprehend they could not ; and as a proof of it, they did not produce any such effects in the first instance, or dose.—Are the symptoms which have been described by *Lady Boughton*, such as would attend an epilepsy, or is there any, and what difference? The epilepsy is distinguished by a total abolition of sense, but an increase of motion in several of the muscles, so that the patient will appear much convulsed, and seems to see and hear every thing that is said and done, and to observe what is passing ; yet, when the fit goes off, he has no knowledge or recollection of what has happened. Apoplexy is a sudden privation of all the powers of sense and voluntary motion ; the person affected seeming to be in a profound sleep, accompanied with considerable noise in breathing. As so little, therefore, is said of convulsions, as a part of *Sir Theodosius Boughton's* symptoms, the state in which he lay seems to have been more of the apoplectic kind than epileptic.—It has been described by *Lady Boughton*, that soon after taking this draught, the stomach heaved very much, and a noise could be perceived as issuing from it ; now is that, in your judgment, to be attributed to either epilepsy or apoplexy, or the effect of the medicine? The effects of the medicine, I think, undoubtedly, and not spontaneous epilepsy or apoplexy ; it is very immaterial whether you call the symptoms epileptic or apoplectic, for whichever they resembled most, I consider them but as symptomatic.—Was the heaving of the stomach the effect of apoplexy or epilepsy, or of this draught? No doubt, I think, the draught was the cause, especially as laurel-water, which the draught seems to have contained, from its peculiar smell, will produce similar effects.—Then your judgment is, that the fatal effects were produced by the medicine thus taken? I think there can be no doubt of that, as they commenced almost as soon as he swallowed the draught ; and a mixture, such as he is supposed to have taken, is known to have

* It cannot be evidence on the part of a scientific witness, as to the identity of any poison, that another person, whose opinion cannot be authoritative, such as that of the lady in question, described it to *smell like the taste* of a second substance. Were there not stronger points in the crown evidence than this of the Oxford professor, I should be inclined to join in the common cry against the issue of this trial.

the power of producing them*.—And, from your knowledge of the effects produced by laurel-water, your opinion is that laurel-water was the poison thus administered to *Sir Theodosius Boughton*? It is. *Dr. Rutty* relates a case “of a girl of eighteen years of age, and in perfect health, who took a quantity, less than two spoonsful, of the first runnings of simple water of laurel-leaves; whereupon, within half a minute, she fell down, was convulsed, foamed at the mouth, and died in a short time.”—Could those effects be produced (speak from your own judgment) by laurel-water? I have no doubt of it. Dogs, and other quadrupeds, (as we are informed,) that take it, fall immediately into totterings and convulsions of the limbs, which are presently followed by a total paralysis; these convulsions, with some additional circumstances, as foaming at the mouth, and loss of sense, constitute the epilepsy which is described among the effects of vegetable poisons.

(Cross-examined by *Mr. Newnham*.) From the appearances of health in *Sir Theodosius Boughton*, and from the medicine not having occasioned any bad symptoms before, you conclude his death was occasioned by some other medicine substituted instead of that, or in addition to it? Most certainly; especially as the smell of it bespoke its having received the addition of a very poisonous ingredient.—Have you never known instances of persons being taken suddenly, when engaged in pleasure or business, or at dinner, and dying convulsed, epileptic, or apoplectic? I have; but those who die suddenly of apoplexy, are generally persons of a full habit, and who are neither so thin or so young as *Sir Theodosius Boughton*.—Have you never known instances of persons of a thin habit being attacked by an apoplexy or an epilepsy? By epilepsy they may.—Have you never heard of a person, having the appearance of perfect health, being seized with an epilepsy without any primary cause giving any warning; have you never heard of people in perfect health being seized with an epilepsy or apoplexy? Yes; apoplexy proceeding from repletion, or the sudden bursting of a blood-vessel: epilepsy may proceed from a variety of causes, partial or general, in the head or elsewhere; but very seldom, I believe, proves so suddenly fatal.—Might not those have happened to *Sir Theodosius Boughton*? There can be no doubt of the possibility of their attacking him, but I think there is no reason to go so far for a cause as to possibility, when this medicine, as all the world knows, will effect it.—That is assuming as a fact that he took two ounces of laurel-water? A much less quantity would be sufficient for the purpose, if we may credit *Dr. Rutty's* account.—You collect that from the similarity of the smell? We have nothing else to judge from but the similarity of the smell.—Is not that the case with a variety of things; will not black cherry-water have that smell? Black cherry-water is said to have the same smell, but it is now out of use; I don't suppose there is an apothecary in the Island who has it, and therefore it could not be substituted by accident for the other vehicle.—Will not bitter almonds have that smell? Yes; and spirits flavoured with them are said to be poisonous to the human species.—You ground your opinion upon the description of its smell by *Lady Boughton*? Yes; we can ground our opinion upon nothing else but that and the subsequent effects. * * *

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* The analogy here is strong, and, one might say, warrantable.

FOR THE PRISONER.

Mr. John Hunter sworn *. 1. Have you heard the evidence that has been given by these gentlemen? I have been present the whole time. — 2. Did you hear *Lady Boughton's* evidence? I heard the whole. — 3. Did you attend to the symptoms her ladyship described as appearing upon *Sir Theodosius Boughton*, after the medicine was given him? I did. — 4. Can any certain inference, upon physical or chirurgical principles, be drawn from those symptoms, or from the appearances externally or internally of the body, to enable you, in your judgment, to decide that the death was occasioned by poison? I was in London then; and a gentleman who is in court waited upon me with a copy of the examination of *Mr. Powell* and *Lady Boughton*, and an account of the dissection, and physical gentlemen's opinion upon that dissection. — 5. I don't wish to go into that, I put my question in a general way? The whole appearances upon the dissection explain nothing but putrefaction. — 6. You have long been in the habit of dissecting human subjects? I presume you have dissected more than any man in Europe? I have dissected some thousands during these thirty-three years. — 7. Are those appearances you have heard described, such, in your judgment, as are the result of putrefaction in dead subjects? Entirely. — 8. Are the symptoms that appeared after the medicine was given, such as necessarily conclude that the person had taken poison? Certainly not. — 9. If an apoplexy had come on, would not the symptoms have been nearly or somewhat similar? Very much the same. — 10. Have you ever known or heard of a young subject dying of an apoplectic or epileptic fit? Certainly; but with regard to the apoplexy, not so frequent; young subjects will perhaps die more frequently of epilepsies than old ones; children are dying every day from teething, which is a species of epilepsy arising from an irritation. — 11. Did you ever, in your practice, know an instance of laurel-water being given to a human subject? No, never. — 12. Is any certain analogy to be drawn from the effects of any given species of poison upon an animal of the brute creation, to that it may have upon a human subject? As far as my experience goes, which is not a very confined one, because I have poisoned some thousands of animals, they are very nearly the same; opium, for instance, will poison a dog similar to a man, arsenic will have very near the same effect upon a dog, as it would have, I take for granted†, upon a man; I know something of the effects of them, and I believe their operations will be nearly similar. — 13. Are there not many things which will kill animals almost instantaneously, that will have no detrimental or noxious effect upon a human subject; spirits, for instance, occur to me? I apprehend a great deal depends upon the mode of experiment; no man is fit to make one, but those who have made many, and paid considerable attention to all the circumstances‡

* The questions put to Mr. Hunter are numbered, for the reason assigned in the former part of the Appendix, (page 187,) and for the more ready application of the subjoined remarks, which I have thereby been enabled to abbreviate materially.

† Loose language enough, as *testimony*.

‡ This observation is founded in good sense; it bears out the advice given in the text, page 140.

that relate to experiments. It is a common experiment, which I believe seldom fails, and it is in the mouth of every body, that a little brandy will kill a cat: I have made the experiment, have killed several cats, but it is a false experiment; in all those cases where it kills the cat, it kills the cat by getting into her lungs, not into her stomach; because if you convey the same quantity of brandy, or three times as much, into the stomach, in such a way as the lungs shall not be affected, the cat will not die; now, in those experiments that are made in forcing an animal to drink, there are two operations going on, one is a refusing the liquor by the animal, its kicking and working with its throat to refuse it; the other is the forcing the liquor upon the animal; and there are very few operations of that kind, but some of the liquor gets into the lungs; I have known it from experience.— 14. If you had been called upon to dissect a body suspected to have died of poison, should you or not have thought it necessary to have pursued your search through the guts? Certainly.— 15. Do you not apprehend that you would have been more likely to receive information from thence than any other part of the human frame? That is the track of the poison, and I should certainly have followed that track through.— 16. You have heard of the froth issuing from *Sir Theodosius's* mouth a minute or two before he died; is that peculiar to a man dying of poison, or is it not very common in many other complaints? I fancy it is a general effect of people dying in what you may call health, in an apoplexy, or epilepsy; in all sudden deaths, where the person was, a moment before that, in perfect health.— 17. Have you ever had an opportunity of seeing such appearances upon such subjects? Hundreds of times.— 18. Should you consider yourself bound, by such an appearance, to impute the death of the subject to poison? No, certainly not; I should rather suspect an apoplexy, and I wish, in this case, the head had been opened to remove all doubts.— 19. If the head had been opened, do you apprehend all doubts would have been removed? It would have been still farther removed, because, although the body was putrid, so that one could not tell whether it was a recent inflammation, yet an apoplexy arises from an extravasation of blood in the brain, which would have laid in a coagulum. I apprehend, although the body was putrid, that would have been much more visible than the effect any poison could have had upon the stomach or intestines.— 20. Then, in your judgment, upon the appearances the gentlemen have described, no inference can be drawn from thence that *Sir Theodosius Boughton* died of poison? Certainly not, it does not give the least suspicion.

(Cross-examined by *Mr. Howorth*.) 21. Having heard the account to-day, that *Sir Theodosius Boughton*, apparently in perfect health, had swallowed a draught which had produced the symptoms described, I ask you, whether any reasonable man can entertain a doubt that that draught, whatever it was, produced those appearances? I don't know well what answer to make to that question.— 22. Having heard the account given of the health of this young gentleman on that morning, previous to taking the draught, and the symptoms that were produced immediately upon taking the draught, I ask your opinion, as a man of judgment, whether you don't think that draught was the occasion of his death? With regard to his being in health, that explains nothing; we frequently, and indeed generally, see the healthiest people dying suddenly, therefore I shall lay little stress upon that: as to the circumstances of the draught, I own they are suspicious; every

man is as good a judge as I am. — *Court.* You are to give your opinion upon the symptoms only, not upon any other evidence given. — 23. *Mr. Howorth.* Upon the symptoms immediately produced, after the swallowing of that draught, I ask whether, in your judgment and opinion, that draught did not occasion his death? I can only say, that it is a circumstance in favour of such an opinion. — 24. *Court.* That the draught was the occasion of his death? No; because the symptoms afterwards are those of a man dying, who was before in perfect health; a man dying of an epilepsy or apoplexy, the symptoms would give me those general ideas. — 25. It is the general idea you are asked about now; from the symptoms which appeared upon *Sir Theodosius Boughton* immediately after he took the draught, followed by his death so very soon after; whether, upon that part of the case, you are of opinion that the draught was the occasion of his death*? If I knew the draught was poison, I should say, most probably, that the symptoms arose from that; but when I don't know that that draught was poison, when I consider that a number of other things might occasion his death, I cannot answer positively to it. — 26. You recollect the circumstance that was mentioned of a violent heaving in the stomach? All that is the effect of the voluntary action being lost, and nothing going on but the involuntary. — 27. *Mr. Howorth.* Then you decline giving any opinion upon the subject? I don't in any opinion to myself; I cannot form an opinion; I can conceive, if he had taken a draught of poison, it arose from that; I can conceive it might arise from other causes. — 28. If you are at all acquainted with the effects and operation of distilled laurel-water, whether the having swallowed a draught of that, would not have produced the symptoms described? I should suppose it would; I can only say this, of the experiments I have made of laurel-water upon animals, it has not been near so quick; I have injected laurel-water directly into the blood of dogs, and they have not died; I have thrown laurel-water, with a precaution, into the stomach, and it never produced so quick an effect with me as described by those gentlemen. — 29. But you admit that laurel-water would have produced symptoms such as have been described? I can conceive it might. — 30. *Mr. Newnham.* Would not an apoplexy or an epilepsy, if it had seized *Sir Theodosius Boughton* at this time, though he had taken no physic at all, have produced similar symptoms too? Certainly. — 31. Where a father has died of an apoplexy, is not that understood, in some measure, to be constitutional? There is no disease whatever that becomes constitutional, but what can be given to a child. There is no disease which is acquired, that can be given to a child; but whatever is constitutional in the father, the father has a power of giving that to the children; by which means it becomes what is called hereditary: there is no such thing as an hereditary disease, but there is an hereditary disposition for a disease†. — 32. *Mr. Howorth.* Do you call apoplexy constitutional?

* It is almost incomprehensible, how a man of any acuteness, or even one without acuteness, who should pay but ordinary attention to such a jumbled question, would proceed to answer it. Here a lawyer sets out with a declaration that he asks a question about "the general idea," (which in itself carries no meaning,) and then specifies a *particular fact* on which the question is really built.

† See Principles, page 521.

We see most diseases are constitutional; the small-pox is constitutional, though it requires an immediate cause to produce the effects. The venereal disease is hereditary. I conceive apoplexy as much constitutional as any disease whatever. — 33. Is apoplexy likely to attack a thin young man who had been in a course of taking cooling medicines before? Not so likely, surely, as another man; but I have, in my account of dissections, two young women dying of apoplexies. — 34. But in such an habit of body, particularly attended with the circumstance of having taken cooling medicines, it was very unlikely to happen? I do not know the nature of medicines so well as to know that it would hinder an apoplexy from taking an effect. — 35. *Court.* Give me your opinion, in the best manner you can, one way or the other, whether, upon the whole of the symptoms described, the death proceeded from that medicine, or any other cause? I do not mean to equivocate, but when I tell the sentiments of my own mind, what I feel at the time, I can give nothing decisive.

I shall now add the remaining part of the commentary which I have ventured to insert upon this important passage in medico-legal history, and which relates entirely to the course of examination pursued with Mr. Hunter.

Had he been allowed to proceed with the intended answer 4, something would perhaps have come out that would have given a different turn to the whole affair. A simple query from *Mr. Howorth*, as to the specific use *Mr. Hunter* had made of the information communicated at that time, would have brought out something probably worth knowing. The answer to 10 is nothing to the purpose. Apoplexy is not the disease of young men nearly twenty-one*; and the nature of epilepsy does not favour the supposition of a person going off in the first fit of that disease at such a period of life. Answer 13 is mere by-play; and though 14 may appear very pertinent, such an examination, however desirable to have been made, when the issue undergoes a mystification on account of its neglect, is not universally necessary, particularly in cases of vegetable poisoning, such as that in question. The answer to 18 is specious enough; but if the head had been opened, and congestion had been found, would Mr. Hunter have maintained that such an appearance discountenanced the supposition of death by narcotic poison? As to coagula (19), the statement that extravasation *must* take place in apoplexy, was (to say the least of it) loose on the part of such an authority. The answer to 22 is decidedly favourable to the evidence on behalf of the crown. Contrast it with that of 20—it savours of contradiction. With regard to questions 23, put by the counsel for the crown, and 24, put (for the more certain understanding of the other) by the judge, is there not a flat contradiction in the answers, followed by an unintelligibly constructed sentence in

* Look at the answer 33.

place of an explanation? At 24 he seems inclined to evade, by an incomprehensible allusion to the symptoms of persons dying in perfect health; as if there were established symptoms of that nature: if the words are correctly taken down, what do they mean? Have they any meaning at all? At 25 he says, "If I knew"—here he must mean of his own knowledge, from having made the draught up himself, for he discredits the crown witnesses if he did *not* know. As to 26, I ask whether narcotic poisons do *not* suppress voluntary action? What does he say to 27? He extinguishes his own torch completely. 28 is merely waiving the question, and to 29 he says fully as much against the prisoner as any thing uttered by him in the course of the examination, or his whole evidence taken together, could possibly be construed to make in his favour. And when at last urged for an opinion of any sort, either way, (35,) what does it all come to? "I can give nothing decisive."

Now, whether the unfortunate prisoner suffered wrongfully or not, I will not take upon me to infer; but I cannot help thinking, that the evidence of the only professional witness brought forward on his behalf, should go for very little, and that, as the ground for forming an opinion, it is not at all to be entertained, when contrasted with that adduced on the part of the prosecution.

Action for Damages sustained by Septic Animal Poison.
Somerset Assizes, April 1819.

JENKINS v. PALMER.

"THIS was rather a curious case. The parties were farmers. In June 1818, a cow belonging to the defendant having died of some disease, was thrown into the river Yeo by the defendant's order. In a short time, owing to the putrefaction, the nuisance was so great that the body was obliged to be removed piece-meal. The plaintiff's cattle drank of the water, and, as several of them died of the same disease as the defendant's cow, it was contended that they were lost in consequence of the infected state of the water; and, therefore, the plaintiff was entitled to receive their value, for which this action was brought.—The defence was well conducted by *Mr. C. F. Williams*, who contended that the plaintiff's cattle had died of the same disease as the defendant's; that the effects inferred to have happened from the dead carcass corrupting the water, were altogether erroneous; that contagion ended when an animal was dead, and that putridity exuding from a corrupt carcass, when diluted by a running stream, would not, even when carried into the stomach of a cow, destroy life. Many witnesses were brought forward, and several medical gentlemen (among them *Mr. Stairdert*, an able surgeon of *Taunton*,) testified that animal matter, in a state of putrefaction, will not communicate contagion; that the effluvia thrown off by contagious or infectious diseases, are perfectly distinct from those which are the products of putrefaction; that the former are generated and thrown off from

diseased *living* bodies, the latter the product only of *dead* matter, may be received into the stomach with perfect safety (a fact which most corporate bodies have long since ascertained). To all this, *Mr. Serjeant Pell* had nothing to answer; but he sported some vulgar sneers against speculation and philosophy; which the jury, however, seemed to treat with contempt, for they found a verdict for the defendant, without troubling *Mr. Justice Best* to sum up."—*Examiner Newspaper*, April 19th, 1819.

DEATH BY DROWNING.

Case of SPENCER COWPER, ESQ., tried for the Murder of SARAH STOUT, at Hertford, 1699.*

THIS is a case of considerable importance in every point of view, and in none more so than as it concerns the subject of medical evidence. Although it may be supposed to have led to the rectification of certain vulgar errors, in regard to the phenomena of death by *drowning*, it will hardly appear that the opinions elicited from the professional witnesses could have been the direct means of doing so.

Out of it arose a controversy which is fraught with intense interest of a medico-legal nature, and of which I persuade myself, that in giving a short account I shall render an agreeable service to my readers. It is necessary to premise, that the deceased was a Quaker — a denomination by no means conspicuous in the annals of *love and madness* — that the affair was connected with certain love matters, whatever might have been the precise merits of the tragical part of the story — that borough politics were also concerned in the business — the Cowper family having a deep interest in the *Hertford* elections†.

Shortly after the trial, *Mr. Cowper*, and those who were arraigned along with him‡, published what they termed their "Case;" but, as this contains nothing beyond matter of law, it would hardly admit of particular notice here. The case of *Stout's* mother was also published — but both these productions

* State Trials.

† The father and brother of *Cowper* were at the time sitting members for *Hertford*, after a strongly contested election, and while the irritation thereby occasioned was still active. It was on that account supposed that many circumstances were exaggerated, and that a vindictive minority was anxious to cast odium on the family of *Cowper*. The Quakers also were anxious to remove the stigma of suicide and amorous intrigue from a member of their society. *Mr. Cowper's* brother, alluded to in the course of the trial, was afterwards chancellor.

‡ Viz. *John Marson*, *Ellis Stephens*, and *William Rogers*, Gents.

amount, in fact, to little more than mere talk about a writ of appeal, in the name of the next heir to the deceased.

“The *Hertford Letter*, containing several brief observations on a late printed trial concerning the murder of *Mrs. S. S.*,” is more to our purpose. It was written to favour the idea that the deceased had been first strangled manually*, and then thrown into the water, in order to give a colour to the charge of suicide — (which was, in fact, sustained on the part of the coroner’s jury, whose verdict was that she had drowned herself, being at the time *non compos mentis*;) and rebutting the pretence that she had died of aqueous suffocation. In support of this opinion, some curious points, as to the rationale of that species of death, are brought forward, which will repay the curiosity of the reader, though I apprehend they will hardly contribute to his instruction. I have no intention of following the writer, and shall merely quote two particulars that are recorded as having been matter of investigation, in the way of experiment. The first is amusing enough — if any thing connected with events of such a nature may be called so. “The last assizes here a man was hanged; after he was dead he was cut down, and buried without a coffin, the grave filled up, and the earth well trod down; in the evening he was digg’d up again, being pressed almost flat with the weight of the earth, was privately cast into the river, and, when it was observed that the corpse would sink, it was exposed to public view, and an advertisement of it was printed in the *Postman*, the 25th July last, with a great show of exultation, by their saying — *Many hundreds having seen this experiment with their own eyes, the opinions of the surgeons produced on the part of the King is thereby destroyed and exploded, and all persons convinced of the contrary.*” The other thing, by way of experiment, is thus related: — “Some weeks since, a surgeon, who had been an evidence on the trial at *Hertford*, going into a bookseller’s shop, meeting some acquaintance there, he fell into discourse about *Mrs. Stout*, and asserted there what he had affirmed at the trial, viz. *that two or three ounces of water will drown a dog*: one of the company told him he could not conceive that so small a quantity of water could do the business. He replied — *Sir, I will lay a guinea that I will drown a dog in the river of Thames, and he shall not have above three ounces of water in him.* The proffer was no sooner made than accepted, time appointed, dog brought, and, with a weight tied to his hinder feet, flung into the river. Some time after, he was taken out and dissected, when, instead of three ounces there were thirty-three; whereby he not only lost his wager, but in a great measure his reputation, as to what he had so confi-

* Principles, &c. p. 228.

dently asserted to the contrary on the trial*." And from such fooleries have medical men formed their *scientific opinions* on matters of the gravest import, and given such opinions upon oath!

I must prefix the evidence of two extra-professional witnesses, in order that the reader may, by some knowledge of a few material circumstances connected with the state or appearance of the body prior to medical interference, be more able to understand allusions made by the *experts* afterwards.

Katharine Dew sworn. (By *Mr. Jones.*) Did you see *Mrs. Stout* taken out of the river? Yes, Sir. — How did she lie in the river? She lay side-way, with her eyes open, and her teeth clinched in her head, with water flowing a little from her face; some part of her, and her petticoats were above water. — Did nothing hold her from sinking? Her right arm lay against the stake. — Did you see her after she was taken out of the river? Yes, Sir. — Was she swell'd? I did not perceive she was swell'd at all. — Did you handle her? No, I touch'd nothing but her petticoat. — Did you observe her legs were in the water? No, I did not. — Did you see where her right arm was? I could not see her right arm, the water flowed over it. — (By *Mr. Cowper.*) Did you see her after this time? No, Sir; I saw her taken out, but not afterwards. — (By *Mr. Baron Hatsell.*) Did you see her after she lay on the ground? Yes, my Lord. — How was she then? She purged at the nose, and one of her eyes; I did not take particular notice after she was out, the notice I took was when she was in the water. — What did you see at her eye? Froth, my Lord. — (By *Mr. Jones.*) Did you see her after she was stripp'd naked? No, Sir. — Was it a settled frothing, or a purging? A purging froth. — (By *Mr. Baron Hatsell.*) Did any body wipe it off? No, my Lord, I did not see any body do it. — Then there was no new froth came? No, my Lord; I saw her froth at the nose, and one of the eyes, as soon as she was taken out, but I did not stay long. — (By *Mr. Cowper.*) Was she in her stays? Yes, Sir. — Was she not laced? Yes, she was laced before and behind. —

* * * * *

Sarah Kimpson sworn. (By *Mr. Jones.*) Did you observe this *Mrs. Sarah Stout*, when she was stripp'd, how her body was? Yes. — Pray give an account of it? She had a great settlement of blood behind her ear, as much as my hand will cover, and more; and she had a great settlement of blood under her collar-bone. — Did you see nothing about her neck? Nothing round her neck; on the side of her neck there was a mark. — Was there any other part bruised? Only her left wrist, and her body was very flat and lank. — (By *Mr. Cowper.*) Pray what day was it that you saw her? It was the day she was found. — Was she not laced? She was laced. — Did you help to strip her? Yes, Sir. — (By *Mr. Jones.*) Did her body seem to be swell'd, or was there any water came from her? I did not observe the least

* See the evidence of *Morley* on the trial.

drop of water that appeared any way. — Do you know what did purge from her? Nothing that I saw. — Had not you a child drowned there lately? Yes, about ten weeks ago. — And you found her? She was drowned at night, and we found her next morning. — Where did you find her, at the top or at the bottom of the water? At the bottom. — How was she? She was swell'd as much as she could hold. — Were her eyes shut or open? Her eyes were shut, and the child was laced as tight as the coat could be. — Was the child opened? Yes. — And what was in the body of the child? 'Twas very full of water*. — (By *Mr. Cowper*.) You say you viewed the child; had it any settlement of blood? I saw none. — And you viewed the body? Yes. * *

Mr. Coatsworth sworn. (By *Mr. Jones*.) Pray, Doctor, had you a view of the body of *Mrs. Stout*? Yes, I had, Sir; I am a surgeon. — Pray give an account of it, and what your opinion was how she came by her death? My Lord, in April last I was sent for by *Dr. Phillips*, to come to *Hertford* to see the body of *Mrs. Stout* opened, who had been six weeks buried†, and he told me, that there was a suspicion she was murdered, and that her relations were willing to have her taken up and opened. I came down, I think, on the 27th of April, and lay at *Mrs. Stout's* house that night, and, by her discourse, I understood she wanted to be satisfied whether her daughter was with child‡. I told her it was my opinion we should find the parts contained in the abdomen so rotten, that it would be impossible to discover the uterus from the other parts; however, if she would have her opened, I could not discover whether she was with child, unless the infant was become bony§. Her face and neck, to her shoulders,

* Nothing could be more vague than this question, excepting the answer. The *body* was full of water. In correct language this means nothing. What part of the body is alluded to? The *abdominal* or *intestinal* cavity? The anatomist knows that this is far from being a distinction without a difference.

† I am not sorry to have this incidental opportunity of entering a caveat against the *extravagant* application of the doctrine laid down at page 179 of this volume, (and also in the *Principles*, page 79.) While it is our business not to conjure up or magnify obstacles to the performance of this, not very pleasant duty, and fortunate that, in case of need, we can obviate the old ground of apprehension on the score of safety to ourselves, let me not be understood as urging the Profession beyond the bounds of reasonable doubt. After death by poison, we may, at a considerable distance of time, draw certain conclusions from appearances or *substances* found in the body — after death by violence, except in certain situations unfavourable to the advance of putrefaction, (and that there are such I need not stop to shew,) an inhumation of six weeks, for instance, may often be hostile to our purpose — still more so I should, *à priori*, assume where the cause of death has been *suffocation* without manual violence, particularly by *drowning*.

‡ This, of course, would be ascertained, by examining the body; contrary to the witness's opinion.

§ By which must be meant (if he meant any thing more than amusing the old lady), unless the *fœtus* was so far developed as to have the bones formed.

appeared black, and so much corrupted that we were unwilling to proceed any further: but, however, her mother would have it done, and so we did open her; and, as soon as she was opened, we perceived the stomach and guts were as full of wind as if they had been blown with a pair of bellows; we put her guts aside, and came to the uterus, and *Dr. Phillips* shewed it us in his hand, and afterwards cut it out, and laid it on the table, and opened it, and we saw into the cavity of it, and if there had been any thing there as minute as a hair, we might have seen it, but it was perfectly free and empty*; and, after that, he put the intestines into their places; and we bid him open the stomach, and it was opened with an incision-knife, and it sunk flat, and let out wind, but no water; afterwards we opened the breast, and lobes of the lungs, and there was no water: then we looked on each side, and took up the lobes of the lungs too, to see if there was no water in the *diaphragm*, (!) and there was none, but all dry. Then, I remember, I said, this woman could not be drowned, for if she had taken in water, the water must have rotted all the guts: that was the construction I made of it then; but for any marks about her head and neck, it was impossible for us to discover it, because they were rotten. — (By *Mr. Cowper*.) You say this inspection was made about six weeks after she was dead? It was made on the 28th of April. She was drowned on the 13th of March. — (By *Mr. Jones*.) Did you make an incision into those parts of the neck and head? No; I told *Mrs. Stout* and her son, if you imagine the skull to be injured, I will open the head, for if the scalp be never so rotten, yet if the skull has suffered any impression, I shall discover it. They said, they did not suspect a broken skull in the case; and so we did not examine it†. — But all the other parts were sound? Yes, sound to a miracle; for I did not imagine we could find them so. — * * * * *

Mr. Dimsdale, senior, sworn. (By *Mr. Jones*.) Had you a view of the body after it was taken up? Yes. — Pray give your opinion of it? On the 28th of April, as I remember, I was sent for down by *Mrs. Stout*, to view the body of her daughter. Her daughter was just taken out of the ground, but not opened; they had just touch'd the body, but not opened the skin, when I came there. — (By *Baron Hatsell*.) Are you a surgeon? Yes, my Lord. Finding her head so much mortified down to her neck, we thought all the parts were seized, and had a consultation, whether we should open her or not; but *Mrs. Stout* was very much enraged, because a great scandal had been raised that her daughter was with child; and she said she would have her opened, to clear her reputation. With that we opened her, and found her body as sound as any flesh could be; no manner of putrefaction in her lungs, or any other part, but she was very full

* The witness's naïve refutation of his opinion, as given in the preceding sentence, is rather amusing. Perhaps he thought he might give one statement *professionally*, and another *juridically*; but, if so, he does not render himself sufficient justice.

† Here an important hint may be offered. As the medical practitioner should, on the one hand, shun the *Scylla* of yielding to clamour and suspicion *against* the innocence of a case, or party, so should he avoid the *Charybdis* of inefficient investigation, merely because the same influence gives no clew to particular points for inquiry. See the Principles, page 47.

of wind. We search'd the stomach and the thorax, and found not one drop of water about it; * * * * *

* * her uterus was taken out, and I saw no manner of sign of conception. After this we had a consultation, to consider whether she was drowned or not drowned; and we were all of opinion, that she was not drowned; only *Mr. Camlin* desired he might be excused from giving his opinion whether she was drowned or not; but all the rest of us did give our opinions that she was not drowned. — (By *Mr. Jones*.) Give your reasons why you believed she was not drowned? My reason was this: because we found no water in her; her intestines were not putrified; for if there had been water in her, that would have caused a fermentation, and that would have rotted the lungs and guts. — (By *Mr. Baron Hatsell*.) Could you tell, so many weeks after, whether she was drowned or no? Yes, my Lord, for this reason: for if she had been drowned, there had been some sign of water; and if there had been a pint of water, it would have rotted her lights and her guts; and that is done in a week's time by fermentation*. — (By *Mr. Cowper*.) Sir, I desire to know, whether, according to reason and your skill, after six weeks' time, it's possible there should be water in the thorax? I do believe there may be some, for it can't come out after the body is dead, but by putrefaction; and there was no putrefaction, but it was firm and sound. — (By *Mr. Baron Hatsell*.) What parts would have been putrified by the water? The lungs and bowels. — And they were firm? They were; and if there had been water, they would have been putrified. — (By a *juryman*.) Was her navel started? No, I never saw such a body in my life. — (By *Mr. Cowper*.) Did you ever see a body that was drowned opened six weeks after? No, never. If a body be drowned a fortnight, the bowels will be so rotten there will be no coming near it; and I took particular notice, and I did not see one drop of water. — (By *Mr. Baron Hatsell*.) Was the coffin close? Yes, it was close, and dry as any board whatsoever; and all the parts sound, but the head and neck and left arm. — (By *Mr. Jones*.) What do you think could be the reason of that? The left arm was rottener than the other; the neck was rotten before. — What did you take to be the cause of it? I can't judge of that†.

John Dimsdale, jun. sworn.—My Lord, the body was opened before I came to see it, and they were drawing up an affidavit that there was no water in the body, and they desired me to sign it; but I desired first to look into the body, and I did look into it, and turned the intestines aside, and there was no water in it; but the head from the neck was very much putrified. — (By *Mr. Jones*.) Do you believe she was drowned? No, I believe not. — Did you open the child that was drowned? What difference was there between the body of that child and this? The child was extremely swelled in the belly and stomach, and had abundance of water in it.—Was the child laced that you

* In the present state of science, I may spare my reader the correction of this notice by any allusion to the rationale of decomposition, now so familiar to all.

† It was a strange oversight, I should think, even so far back as 1699, not to have made any allusion to the nature of the ground in which the grave was, or to the species and state of the wood of which the coffin was made, or the compactness of its structure.—See the evidence of Sir Hans Sloane.

opened? It was laid upon the table before I came.—(By *Mr. Cowper*.) How long was it before the child was opened? It was drowned in the afternoon, and opened the next morning.—You said, Sir, you was asked to sign the affidavit before you saw the body, and *you were honest*, and would see the body first: pray who asked you*? All of them did.—Who in particular; if you please, name them? *Mr. Coatsworth, Mr. Phillips, Mr. Camlin, &c.* They asked me to set my hand to it, because they thought I had seen it before.

Dr. Dimsdale sworn.—(By *Mr. Jones*.) *Mr. Robert Dimsdale*, was you at the opening of this body? I came after it was opened; my brother and I came together.—What professions are you of? Physicians.—When the body was taken up, they desired us to be there to inspect the body; but before we came, it happened they had opened the body, and were setting their hands to a paper, a sort of affidavit; and when I came in, they would have had us set our hands, but we would not till we had looked upon the body, and went and laid it open again, and we did not find the least drop of water, neither in the thorax, nor abdomen.—(By *Mr. Cowper*.) Is it possible there should be water in the thorax, according to your skill? Yes, we did think there would have been, if she had been drowned.—(*Mr. Baron Hatsell*.) Could you expect to find it so long as six weeks after? We should have expected that, or a putrefaction; but we found no putrefaction, neither in the bowels nor intestines; but only upon her head and shoulders, and one arm.—(By *Mr. Cowper*.) Pray, by what passage does the water go into the thorax? 'Twill be very difficult for me to describe the manner here; but we should have found some in the stomach and intestines.—Pray, Sir, how should it go into the thorax? By the lymphæduct†, if carried by any means.—When the party is dead, can any water pass into any part of the body? We opened the abdomen of the child that was drowned, and found in the several cavities abundance of water.—(By *Mr. Jones*.) When a person is dead, can they receive any water after? No; for all the parts are closed and contracted‡.—(By *Mr. Cowper*.) Pray, if a dead body be put into the water, will not the water come into the windpipe? *I question whether it will or no.*—Was her mouth shut? She was putrified about the shoulders, and one arm that I saw was putrified; it was the left arm, as I take it.—What is your opinion as to her death? I believe, if she had been drowned there would have been a putrefaction of the abdomen first; and it was her extreme parts, her arm, her head, and her breast, that were putrified; but her bowels seemed firm and sound.—Then

* This may be borne in mind when considering the instruction given in the text, p. 140.

† I must leave the anatomical reader to deal with this term as he pleases. The tenor of technical phraseology throughout this trial is to the last degree irrelevant.

‡ There appear to have been several instances of attempts to evade the question, but in vain. Is not the reason at last assigned by this witness at direct variance with truth, as to the state of dead bodies? Is not relaxation of the sphincters one of the characteristics of extinguished vitality? At a distance of several weeks after death, we should expect considerable laxity in the fibres generally. But this will be connected with the process of dissolution, which seems, in the case under notice, not to have made any great advance.

you don't think her death was by drowning? No.—(By *Mr. Cowper*.) Pray, did not you give some certificate or paper declaring the death of this gentlewoman, before you saw the body at all? No, I did not.—Sir, I would ask you, was not you angry that *Mr. Camlin* would not join with you in opinion? No.—*Did not you tell him that you were a graduate physician, and was angry he would not join with you? Suppose I did?*—(Mr. *Baron Hatsell*.) But did you do so or no? Yes, my Lord, we had some words about it.

(Mr. *Jones*.) Swear *Dr. Coatsworth*, (which was done.)—*Mr. Jones*.—Now, my Lord, we call these gentlemen, that are doctors of skill*, to know their opinion of them that are found floating without water in them, how they came by their death? I have not seen many drowned bodies to make observations upon, but it is my opinion, that every body that is drowned is suffocated by water passing down the windpipe into the lungs upon respiration; and, at the same time, the water pressing upon the gullet, there will be a necessity of swallowing a great part of it into the stomach. I have been in danger of being drowned myself, and I was forced to swallow a great quantity of water. If a person was drowned and taken out immediately, as soon as the suffocation was effected, I should not wonder if there were but little water in the stomach and guts; but if it lay in the water several hours, it must be very strange if the belly should not be full of water: but I will not say it is impossible it should be otherwise.—(Mr. *Cowper*.) I desire to know whether this gentleman attempted to drown himself, or was in danger of being drowned by accident? It was by accident: I was passing up the ship side, and took hold of a loose rope instead of the entering-rope, which failing me, I fell into the water.—But you struggled to save yourself from drowning†? I did so: I have seen several persons that have been drowned, and they have lain several days, until by a fermentation they have been raised; but I never made my observations on any persons that have been drowned above six hours.—(Mr. *Jones*.) Did you ever hear of any persons, that, as soon as they were drowned, had swam above water? I have not known such a case.—(Mr. *Cowper*.) Did you ever know, Sir, a body that was otherwise killed, to float upon the water? I never made any observation of that.—(Mr. *Baron Hatsell*.) *Dr. Brown* has a learned discourse (in his vulgar errors,) upon this subject, concerning the floating of dead bodies; I don't understand it myself, but he hath a whole chapter about it.

Dr. Nailor sworn.—(Mr. *Jones*.) We ask you the same question that *Dr. Coatsworth* was asked—What is your opinion of dead bodies? If a body be drowned, will it have water in it or not? My Lord, I am of opinion, that it will have a quantity if it be drowned; but if there be no water in the body, I believe that the person was dead before it was put into the water.—(Mr. *Cowper*.) I would ask the Doctor one question, my Lord, whether he was not a constant voter against the interest of our family in this corporation? I never did come to give a vote, but *Sir William Cowper*, or his son, opposed me, and said I had no right to vote.—I would have asked the same question of the *Dimsdales*

* The witnesses in question seem to have been brought from town as men of eminence, for the purpose of speaking to matters of opinion.

† This refers to an opinion noticed by various authors, and mentioned in the *Principles*, p. 299.

if I had remembered it; they are of another party, as this gentleman is.—(*Mr. Baron Hatsell.*) It is not at all material, as they are witnesses.

Dr. Babington sworn.—(*Mr. Jones.*) Pray what is your opinion of this matter? I am of opinion, that all bodies that go into the water alive, and are drowned, have water in them, and sink as soon as they are drowned, and don't rise so soon as this gentlewoman did.—(*By Mr. Cowper.*) Pray what is your profession, Sir? I am a chirurgeon.—Because *Mr. Jones* called you Doctor? (*Mr. Baron Hatsell.*) Did you ever see any drowned bodies? Yes, my Lord, I once had a gentlewoman a patient, that was half an hour under water, and she lived several hours after, and in all that time she discharged a great quantity of water; I never heard of any that went alive into the water, and were drowned, that floated as soon as this gentlewoman did; I have heard so from physicians*.—(*Mr. Baron Hatsell.*) I have heard so too, and that they are forced to tie a bullet to dead bodies thrown into the sea, that they might not rise again.—(*Mr. Cowper.*) The reason of that is, that they should not rise again, not that they will not sink without it; but I would ask *Mr. Babington*, whether the gentlewoman he speaks of went into the water voluntarily, or fell in by accident? By accident; but I believe that don't alter the case.

Dr. Burnet sworn.—(*Mr. Jones.*) You hear what is the matter in question, what is your opinion of it? My Lord, I think that if any person fall into the water by accident, or throws himself in, the body will receive water as long as it is alive and there are endeavours for respiration; and after these endeavours are over, there is no water will come in, for all the parts are closed: so, consequently, there must be water, in all probability, found in her.—What—do they swim, or sink? They sink; I never saw a person drowned taken up without water in my life, but I have seen several *full of water* (!!)—(*Mr. Cowper.*) I think you say, when the faculty of respiration ceases, no water comes in? Yes, that is my opinion.—But the water does pass into them while there are endeavours for respiration? Yes, that is my opinion.

Dr. Woodhouse sworn.—(*Mr. Jones.*) Doctor, what is your opinion of this matter? My opinion is, that no person is suffocated by water, but he must have a great deal of water within him, a great deal of water in the stomach, and some in the lungs.—(*Mr. Cowper.*) Pray, Sir, did you ever open any of these bodies? Yes, I have opened a child myself, that had a great quantity of water in it.—Did you find any quantity of water in the throat? There was some, but a little; but a great deal in the stomach.—Pray which way can it pass into the thorax? While the person is struggling for respiration, there may be a relaxation of the glottis, and the person must suck in water as well as air, and some water may get into the windpipe, and so enter into the lungs. Is there a passage from the lungs to the thorax? *The thorax is the vessel where the lungs lie; the lungs in the thorax; the breast is the cavity where the lungs lie; the windpipe is the conveyance to the lungs, and a person in respiration takes down some water there; but no doubt the greater quantity will be in the stomach.*—(*Mr. Baron Hatsell.*) Pray let me ask you a question: some of the witnesses said, that if a person is

* But could this *gentlewoman*, who lived several hours after she had been taken out of the water, come under the description of a "drowned body?"

drowned, and lies dead a great while, the inwards will be putrified; what is your opinion of it? No doubt, my Lord, where water gets into the stomach, or wherever it is, it will putrify very soon.

Edward Clement sworn. — (*Mr. Jones.*) Are not you a seaman? Yes, Sir. — How long have you been so? Man, I have writ myself but six years, but I have used the sea nine or ten years. — Have you known of any men that have been kill'd and thrown into the sea, or who have fallen in and been drowned? pray tell us the difference as to their swimming and sinking? In the year 89 or 90, in Beachy fight, I saw several thrown overboard during the engagement, but one particularly I took notice of, that was my friend, and killed by my side. I saw him swim for a considerable distance from the ship, and a ship coming under our stern, caused me to lose sight of him; but I saw several dead bodies floating at the same time. Likewise, in another engagement, where a man had both his legs shot off, and died instantly, they threw over his legs; though they sunk, I saw his body float. Likewise, I have seen several men who have died natural deaths at sea; they have, when they have been dead, had a considerable weight of ballast and shot made fast to them, and so were thrown overboard; because we hold it for a general rule, that all men swim, if they be dead before they come into the water: and, on the contrary, I have seen men when they have been drowned, that they have sunk as soon as the breath was out of their bodies, and I could see no more of them. For instance, a man fell out of the Cornwall, and sunk downright; and seven days afterwards we weighed anchor, and he was brought up grasping his arm about the cable*: and we have observed in several cases, that where men fall overboard, as soon as their breath is out of their bodies, they sink downright; and, on the contrary, where a dead body is thrown overboard without weight, it will swim. — You have been in a fight; how do bodies float after a battle? Men float with their heads just down, and the small of their back and buttocks upwards†; I have seen a great number of them, some hundreds, in Beachy-head fight, when we engaged the French. I was in the old Cambridge at that time; I saw several (what number I will not be positive, but they were a great number, I can't guess to a score,) that did really swim, and I could see them float for a considerable distance. — Have you seen a shipwreck? Yes; the Coronation, in Sept. 1691. I was then belonging to the Dutchess, under the command of *Captain Clement*: we look'd and see them taking down their masts; we saw the men walking up and down on the right side, and the ship sunk down, and they swam up and down like a shoal of fish, one after another, and I see them hover one upon another, and see them drop away by scores at a time; and there was an account of about nineteen that saved themselves, some by boats, and others by swimming; but there were no more saved out of the ship's complement, which was between five and six hundred, and the rest I saw sink downright, some twenty at a time. There was a fisherman brought our captain word, that, in laying of his nets, he drew up some men close under the rocks, that were drowned, belonging to the Coronation: we generally throw in bags of ballast with them. — I suppose all men that are drowned, you sink them with weights? Formerly, shot was allowed for that purpose: there used to be threescore weight of iron, but now it is a bag of ballast that is made fast to them. — Then

* See Principles, page 561. † See Medical Jurisprudence, ii. 41.

you take it for a certain rule, that those that are drowned sink, but those that are thrown overboard do not? Yes; otherwise, why should government be at that vast charge to allow threescore, or fourscore weight of iron to sink every man, but only that their swimming about should not be a discouragement to others*? * * * *

Mr. Cowper †.—*Dr. Sloane*, you were in court when these gentlemen gave their opinion concerning *Mrs. Stout's* having no water in her; I desire you would give your opinion in that matter? I have not heard them very particularly or distinctly, because of the great crowd; some of them I have. Cases of this kind are very uncommon, and none of them have fallen directly under my knowledge. As to my opinion of drowning, it is plain, that if a great quantity of water be swallowed by the gullet into the stomach, it will not suffocate nor drown the person. Drunkards, who swallow freely a great deal of liquor, and those who are forced by the civil law to drink a quantity of water, which in giving the question (as 'tis call'd,) is poured into them by way of torture, to make them confess crimes, have no suffocation or drowning happen to them ‡. But, on the other hand, when any quantity comes into the windpipe, so as it does hinder or intercept the respiration, or coming in of the air, which is necessary for respiration or breathing, the person is suffocated. Such a small quantity will do, as sometimes in prescriptions, when people have been very weak, or forced to take medicines, I have observed some spoonfuls in that condition, (if it went the wrong way,) to have choaked or suffocated the person §. I take drowning in a great measure to be thus, and though it is very likely when one struggles he may, (to save himself from being choaked,) swallow some quantity of water; yet that is not the cause of his death, but what goes into the windpipe and lungs. When a person comes dead into the water, I believe some quantity will go into the windpipe; and I believe, without force, after death little will get into the stomach, because that it should, swallowing is necessary, which after death cannot be done.—(*Mr. Baron Hatsell*.) Pray, Doctor, I understand you say this, that in case a person is drowned, that there may be but little water in the stomach? That it is accidental, my Lord.—But what do you say to this, if there had been water in the body, would it not have putrified the parts after it had lain six weeks? My Lord, I am apt to think it would have putrified the stomach less than the lungs, because the stomach is a part of the body that is contrived by nature partly to receive liquids; but the contrivance of the lungs is only for the receiving of air; they being of a spongy nature, the water might sink more into them than the stomach; but I believe it might putrify there too after

* Honest Jack, who figures here as a *scientific* or *professional* witness, acquits himself with at least as much credit as the "Doctors of skill." His reasoning is quite as pertinent, and his inductions are fully as fair. His final argument must have been convincing to the most stubborn opponent. Why indeed should government sink men with iron, except—"pour encourager les autres?"

† The remaining witnesses were for the defence.

‡ Principles, p. 225.

§ With all respect to the name of Sloane, a statement so truly careless, was unworthy of Sir Hans. We can understand nothing from it, but that whole spoonfuls, that is ounces, of liquid, may accidentally pass the glottis, in the attempt to swallow!

some time*. I am apt to think, that when a body is buried under ground, according to the depth of the grave, and difference of the weather and soil, the fermentation may be greater or lesser; and that, according to the several kinds of meats or liquids in the stomach, the putrefaction will likewise vary, so that it seems to me to be very uncertain.—But when they are in a coffin, how is it then? No doubt there will be a fermentation, more or less, according as the air comes more or less into the body. Indeed it may be otherwise when the air is wholly shut out, which is supposed to be the way of embalming, or preserving dead bodies of late, without the use of any spices, which is thought, in a great measure, to be brought about by the closeness of the coffin, and hindering the air from coming into the body.—(By *Mr. Cowper*.) Is it possible, in your judgment, for any water to pass into the thorax? I believe 'tis hardly possible that any should go from the windpipe into the cavity of the thorax, without great violence and force, for there is a membrane that covers the outside of the lungs, that will hinder the water from passing through into any part without them.—Now, do you think it possible to find water in a drowned body after six weeks? I am apt to think, if there was any quantity in the lungs, the sponginess of the part would suck up some part of it. As to the stomach, I have not known it tried, but 'tis like if there was a great fermentation; a great deal of it would rise up in vapours or streams, and go off that way.—

Dr. Garth, I can't tell whether you were in court when the surgeons who are witnesses for the king, gave their evidence? Yes, I was.—Then I desire you, Sir, to give your opinion as to those particulars? I observed in this trial, the first gentleman call'd for the king, that spoke to this matter, was *Mr. Coatsworth*. He saith he was sent for to open her, upon an aspersion of her being said to be with child. I agree with him in what he speaks to that point, but must differ with him when he infers she was murdered, because he found no great quantity of water in her, as also her head extremely mortified, but not her lungs; (lungs and bowels, I think, were used promiscuously.) Now, my Lord, as to the matter of putrefaction, I think 'tis not much material, whether there be any water or no in the cavities of the body; if water would hasten putrefaction, it would do it as well in the lungs as otherwise; *there is always some water in the lymphducts there, the breaking of which, may be one occasion of catarrhs.* As to what relates to the putrefaction of the head, it may happen from a stoppage of the reflux blood, which is staid there in a great quantity, through the suffocation in the water, or from the nearness of the brain, which is observed often to mortify first.—The next was *Mr. Dimsdale*. (I would speak to them all in order, if my memory would permit.) I think he was of the same opinion with *Mr. Coatsworth*; he laid the stress of his suspicion upon the mortification of the head, which I think is not at all material, no more than what they infer from her floating; it being impossible the body should have floated, unless it had rested, or had been entangled among the stakes; because all dead bodies, I believe, fall to the bottom, unless they be prevented by some extraordinary tumour. My Lord, we have not only philosophy, but experiments for this. The witnesses all agree she was found upon her side, which, to suppose her to float in

* It is a very important matter, as relates to forensic enquiry, to be aware that the lungs are the most tardy of all the soft parts of the body to become putrescent.—*Principles*, pp. 351, 405.

this posture, is as hard to be conceived, as to imagine a shilling to fall down and rest upon its edge, rather than its broadside; or that a deal board should rather float edgeways than otherwise; therefore, 'tis plain she was entangled, or else the posture had been otherwise. As to the quantity of water, I do not think it necessary it should be very great. I must own the water will force itself into all cavities where there's no resistance. I believe when she threw herself in, she might not struggle to save herself, and, by consequence, not sup up much water. Now, there's no direct passage into the stomach but by the gullet, which is contracted or purs'd up by a muscle, in nature of a sphincter; for if this passage was always open, like that of the wind-pipe, the weight of the air would force itself into the stomach, and we should be sensible of the greatest inconveniences. I doubt not but that some water fell into her lungs, because the weight of it would force itself down; but if we consider the windpipe, with its ramifications, as one cylinder, the calculation of its contents will not amount to above 23 or 24 solid inches of water, which is not a pint, and which might imperceptibly work and fall out. I remember I offered a wager at Garraway's coffee-house, to a gentleman here in court.—(*Mr. Baron Hatsell.*) Pray, Doctor, tell us your opinion as to what the seaman said, and also as to what *Dr. Sloane* said, whether water in the body will putrify it? I say not, for in some places they keep flesh meat from corrupting by preserving it in water; and 'tis well known, 'twill putrify less so than when exposed to air. But what do you say as to the sinking of dead bodies in water? If a strangled body be thrown into the water, the lungs being filled with air, and a cord left about the neck, 'tis probable it may float, because of the included air, as a bladder wou'd*; but here is neither cord, nor any mark of it, nor nothing but a common stagnation.—But you don't observe my question; the seaman said that those that die at sea, and are thrown overboard, if you don't tie a weight to them, they will not sink: what say you to that? My Lord, no doubt in this they're mistaken. The seamen are a superstitious people; they fancy that whistling at sea will occasion a tempest. I must confess I never saw any body thrown overboard, but I have tried some experiments on other dead animals, and they will certainly sink; we have tried this since we came hither. Now, my Lord, I think we have reason to suspect the seaman's evidence, for he saith that threescore pound of iron is allowed to sink the dead bodies; whereas, six or seven pounds wou'd as well. I cannot think the commissioners of the navy guilty of so ill husbandry; but the design of tying weights to their dead bodies is to prevent their floating at all, which otherwise would happen in some few days; therefore, what I say is this, that if these gentlemen had found a cord, or the print of it, about the neck of this unfortunate gentlewoman, or any wound that had occasioned her death, they might then have said something.—(*Mr. Cowper.*) Do you apprehend that any quantity of water can enter into the cavity of the thorax? 'Tis impossible there should till the lungs be quite rotten; there is no way but by the lungs, which are invested with so strong a membrane, that we cannot force breath without our blowpipes through it: and there's a great providence in such a texture; for if there were any large pores in this membrane, the air would pass through it into the cavity of the thorax, and prevent the dilatation of the lungs, and, by consequence, there would be an end of breathing.

* This is frivolous, and not founded in observation.

Dr. Morley, pray be pleased to give your opinion of these matters? Those which seem to be questions of greatest moment are, whether there was a necessity for this body (if drowned,) to have a great quantity of water in it, and whether bodies thrown dead into the water float? To the first I answer positively, that there is no absolute necessity that she should have a great quantity of water in her; and I think the question *Mr. Cowper* ask'd *Dr. Coatsworth*, whether he had like to have been drowned by accident or design, suits with my assertion; for if this gentlewoman did voluntarily drown herself, she then, in all likelihood, threw herself into the water with a resolution of keeping her breath for a speedy suffocation, and then, if upon the first endeavours for respiration, (which naturally must be,) she drew into her lungs two ounces of water, it was the same thing to drowning of her as if there had been two ton. We see the same thing done by divers, in order to save themselves, as it happened to this unfortunate gentlewoman, in her design of destroying herself. If a diver, before he comes to the surface of the water, should so far mistake his power of holding his breath, that he should be forced to endeavour respiration, the little water he drew into his lungs by this attempt to respire, may drown him. We last night drowned a dog, and afterwards dissected him, and found not a spoonful of water in his stomach, and I believe about two ounces in his lungs. While we were doing this, we drowned another, and he lay at the bottom, and did not float; no more would he have done, if he had been hanged before thrown into the water. We took him up, and opening him, we found much about the same quantity of water in his lungs, and little or none in his stomach; they both froth'd at nose and mouth, because the water coming into the little bladders of the lungs, and there meeting with air, a commotion arose between the water and air, which caused the froth. To the second question, I think, if bodies new killed swim, 'tis by accident; for the reason that bodies swim is because by putrefaction they rarefy; by rarefication they grow lighter, which brings them to the top of the water.—I desire to know if any man of skill, in prudence, would give his opinion?—(*Mr. Baron Hatsell*.) That is not a proper question.—(*Mr. Cowper*.) Then I will ask it thus: Do you think, Doctor, it is to be known six weeks after, if a person was drowned? I think it is morally impossible.—Can there be any water in the thorax? By an imposthume, or some violence to nature, possibly, but I think no otherwise.

Dr. Woollaston, what is your opinion, if a person be drowned, whether it can be discovered six weeks after? My Lord, I think it is impossible to be known; for if there had been never so much water in the body at first, it could not lie there so long, but must of necessity have forced its way out. We see in persons that die of dropsies, that the water will work itself out (and sometimes burst the body,) before it is buried. And I am sure, if it do so in dropsies, where there are no visible passages for it to get out at, it must do so much more in drowned persons, where the water lies only in the stomach and guts, and has nothing to hinder its working out, when it ferments, as it always doth.—Have you ever made any experiments in that nature, Doctor? I have made no experiments, but I have seen a very particular instance.—(*Mr. Baron Hatsell*.) That is very well; pray let us hear it, Doctor? My Lord, about three years since, I saw two men that were drowned out of the same boat. They were taken up the next day after they were drowned. One of 'em was indeed prodigiously swelled, so much, that his cloaths were burst in several places of his sides and arms, and

his stockings in the seams; his hands and fingers were strangely extended, his face was almost all over black: but the other was not in the least swelled in any part, nor discoloured. He was as lank, I believe, as ever he was in his lifetime, and there was not the least sign of any water in him, except the watery froth at his mouth and nostrils. My Lord, this I saw myself, and took very particular notice of it.—(*Mr. Jones.*) Did you see these bodies taken out of the water yourself, Doctor? No, Sir.—How long had they been taken out when you saw them? I inquired, and to the best of my memory, it was that same day.—(*Mr. Baron Hatsell.*) But what do you think, Doctor, of a person's being drowned without taking in any water? My Lord, what is taken in is, I believe, chiefly at the surface of the water, when they open their mouths for breath, and the water that rushes in, they are forced to drink down, to keep it from the lungs; but when the head is quite under water, I don't think it is possible for any quantity to get down into the stomach, because it being breath they open for, the very first water they take in would of necessity fill the lungs; and when the breath is stopped, I don't see how they can swallow.

(*Mr. Cowper.*) *Dr. Gelstrop*, what is your opinion of this matter? I don't think they can make any judgment of persons being drowned after six weeks time.—Can any water get into the thorax? No, not unless the lungs be putrified.—Is a great quantity of water necessary to persons dying by drowning? No, only so much as may hinder respiration.

Now, my Lord, I would call *Mr. Wm. Cowper*, and because of his name, I must acquaint your Lordship, that he is not at all related to me, though I should be proud to own him if he were so; he is a man of great learning, and I believe most people admit him the best anatomist in Europe. *Mr. Cowper*, pray will you give your opinion of this matter? My Lord, I hope what I shall say will not be suspected because I am of the same name, for this gentleman is an utter stranger to me.—(*Mr. Baron Hatsell.*) Pray, *Mr. Cowper*, without any apology, give your opinion concerning persons drowned, and how 'tis with them in their inward parts? I will give you a short account, I hope to your satisfaction too, my Lord. I will not only speak from reason, but give you the testimony of the experiments I have made upon this occasion. My Lord, I heard it made a mighty argument, that this person had no water that seemed to flow out; but the witnesses agree there was a froth. Now, my Lord, it was not reasonable to expect any thing but froth. My Lord, had she been thrown into the water, and made her utmost efforts, which she would then have done, to have saved herself, and been often buoyed up to the top of the water, no doubt but she would have swallowed a considerable quantity of water before she had been drowned; and it may be expected to flow from her, if her head had been inclined downwards. This is a truth that no man can deny, who is acquainted with any thing of this nature, that when the head of an animal is under water, the first time it is obliged to inspire, (or draw in air,) the water will necessarily flow into its lungs, as the air would do if it were out of the water; which quantity of water (if the dimensions of the windpipe and its branches in the lungs be considered,) will not amount to three inches-square, which is about three ounces of water. Nor is a greater quantity of water in the windpipe necessary to choke any person, if we do but reflect what an ebullition is caused by its meeting with the air which remained in the lungs, whereby a small quantity of water is converted into froth, and

the channel of the windpipe and those of the bronchia are filled with it; insomuch, that no air can enter the lungs for the office of respiration. After a suffocation is thus commenced, (I am apt to think,) all regular animal actions are perverted, and particularly that of swallowing (or deglutition), and what water flows into the lungs, at the instant after this suffocation, is, from its own weight, which is more or less as the body is farther under, or nearer the surface of the water. My Lord, I don't speak this by way of conjecture or hypothesis, but I have made experiments, which have suggested what I here offer. I shall, by the bye, tell you how fallacious the first experiment was, when I proposed to satisfy myself whether a dead body would float in water. It happened that a spaniel, that had a great deal of long hair, was hanged for this purpose, which I found swim on the surface of the water; but when I considered that his hair might buoy him up, I caused another dog, which had shorter and less hair, to be hanged and put into the water, which (agreeable to what I had always conceived of a human body,) sunk directly to the bottom. In order to satisfy myself what quantity of water was necessary to enter the body of an animal, and cause a suffocation in water, I caused three dogs, when alive, to be suddenly plunged under water till they were stifled; one was before I left London, the other two I made the experiment on last night, in the presence of *Dr. Sloane*, and *Dr. Morley*, and we could not compute there was more than three ounces of water in their lungs, and none, that we could perceive, in their stomach. Dead bodies necessarily sink in water, if no distention of their parts buoy them up: this distention sometimes happens before death, at other times soon after; and in bodies that are drowned after they lie under water, this enlargement of them is caused by a rarefaction of the humours within the cavities, and the body necessarily rises to the surface of the water. Your Lordship may infer this from what the seaman told you; and the great weight they use to fasten to their dead bodies that die of diseases, was not of such use to sink them, as it was to prevent their floating afterwards; so that the weight was necessary for those that were killed as well as those that died of diseases. It is so commonly known, that the contents in the stomach of a dead body are discharged by the mouth and nostrils, so soon as it begins to ferment, and the belly becomes distended, that 'tis no wonder that water, if the greatest quantity of that had been in the stomach, or any thing else that was fluid, must be forced from thence six weeks after death. My Lord, I can't but think it ridiculous to expect water in the cavity of the thorax; it is such a conceit that nothing in nature can account for, unless the lungs had suffered some aposthumation, or the like, whereby the water may pass their outward membranes into that cavity.

(*Mr. Cowper.*) With your Lordship's favour, I now think it a proper time to make this observation. The witnesses that have given evidence for the king do say they believe she was not drowned, but they have not pretended to say how she died otherwise.—(*Mr. Baron Hatsell.*) That is very true.

(*Mr. Cowper.*) *Dr. Crell*, I desire you will be pleased to give an account of this matter? My Lord, I have little to say in this affair, the physicians that have been examined already having made it out, that persons who are drowned may have but little water in their bodies; but I have taken what pains I could, upon so short a warning, and I will tell you the opinion of several eminent authors. My own opinion is, that a very small quantity of water, not exceeding three ounces, is

sufficient to drown any body; and I believe that the reason of the suffocation, or of any persons being stifled under water, is from the intercepting of the air, that the person can't breathe, without which he cannot live. Now, my Lord, I will give you the opinion of several ancient authors.—(*Mr. Baron Hatsell.*) Pray, Doctor, tell us your own observations? My Lord, it must be reading, as well as a man's own experience, that will make any one a physician; for without the reading of books of that art, the art itself cannot be attained to. Besides, my Lord, I humbly conceive, that in such a difficult case as this, we ought to have a great deference for the reports and opinions of learned men; neither do I see any reason why I should not quote the fathers of my profession in this case, as well as you gentlemen of the long robe quote Coke upon Littleton in others; but I shall not trouble the court long, I shall only insist upon what *Ambrose Paré* relates in his Chapter of Renunciations. He was chief surgeon to *Francis the First*, employed by him in most of his sieges and battles against the emperor *Charles the Fifth*, and consequently must observe, and could not be ignorant of such like casualties in such great bodies of men. He tells us, that the certain sign of a man's being drowned, is an appearance of froth about his nostrils and mouth. Now, my Lord, I think that every one of the king's evidences observed it in the present case, and a woman swore that she saw her purge at the nose; which could not be, as he declares, if the person had been strangled, or otherwise killed before. As to the quantity of water requisite to drown a person, I believe that three ounces, or less, is enough, to wit, as much as will fill the windpipe, and so stop the breathing of the person drowning. I am not now to descant upon matter of fact, whether she drowned herself; but my firm opinion is, that she was drowned; for though sometimes, not always, there is water found in the bodies of such persons, yet wherever it be, besides the lungs, it is superfluous as to the end, and accidental upon violent strugglings.

Mr. Cowper. I desire *Mr. Harriot* may be asked what observations he hath made concerning this matter? My Lord, when I was a surgeon in the Fleet, I made it always my observation when we threw men overboard that were killed, some of them swam, and some sunk; and I remember particularly, when the *Sandwich* was burnt, we saw abundance leap off from on board, and they sunk directly, but in a little time I observed some swim again.—(*Mr. Baron Hatsell.*) When a dead body is thrown overboard, does it sink or swim? I always observed that it did sink. When we were in the Channel, and in time of peace, we never threw any overboard but we put some weight to them; but it was not to make them sink, but for decency sake, that they might not be driven to shore when they began to float.

Mr. Cowper. I desire that *Mr. Bartlet* may be asked to the same purpose? I have been in several of the king's ships of war that have been disabled and forced to lie by, in several engagements between the French and English, and I never saw any of the bodies float; either of the men that were killed in our ship, or in the ships that have been near us, I have not seen a body upon the surface of the water.—(*Mr. Baron Hatsell.*) Another witness said, that after an engagement he saw them swimming? I can't tell what he saw, my Lord, but what I say I am ready to make oath of.

Mr. Cowper. *Dr. Camlin*, will you please to give my Lord and the Jury an account whether you were employed by the coroner's

inquest to view the body of *Mrs. Stout*, after she was drowned, and the marks upon it, and tell my Lord your opinion of it? I was sent for by the coroner and the jury that sat upon the body of *Mrs. Sarah Stout*, the coroner being then at her mother's house, and the coroner desired *Mr. Dimsdale* and me to go and take notice of the marks upon her neck and upon her breast; we viewed all about, and perceived a mark under her left ear; we looked to see if there was any contusion, and we perceived a settlement of blood upon her breast, and another upon her arm; and when we came back, *Mr. Dimsdale* made the report, I stood by him at that time, that it was only a common settlement.—Pray, *Mr. Camlin*, was the spot above or below the collar-bone? Below the collar-bone.—What did *Mr. John Dimsdale* say then concerning this matter? I understood that he was of opinion that it was only a common stagnation of blood, that happens in the case of drowned people.—(*Mr. Baron Hatsell*.) Did he say so to the jury? *Mr. Dimsdale* spake for us both, and I understood him that it was a stagnation that did commonly happen to drowned people; and that was my opinion of it too.—(*Mr. Couper*.) And that you agreed to be your report? Yes.—Pray, *Mr. Camlin*, was you present when the child which was drowned in the same place was taken up? Yes, it was taken up some time after, near the same place, as I was told, and there was more and greater signs of the stagnation of blood on the body of this child, than on the body of *Mrs. Stout*; the child's face was black and discoloured.—(*Mr. Baron Hatsell*.) How old was the child? Between ten and eleven, as near as I could guess.—Had *Mrs. Stout* any signs of being strangled when you saw her first? Nothing at all that I could discern.

* * * * *

Should a similar case occur in the present day, the question as to the buoyancy of bodies would hardly be gone into. The material circumstance would be, the appearances about the lungs and the central part of the circulating system. Even the presence or absence of water in the stomach would be soon estimated according to its real import, which is not very great.

STRANGULATION AND IMPUTED SUICIDE.

*Case of GREEN, BERRY, and HILL, tried for the Murder of
SIR E. GODFREY. 1679*.*

[To the medical jurist this is one of the most interesting cases with which the annals of British Jurisprudence have furnished us. Whatever may have been the fact as to the death of this magistrate, the following portion of the *credible* evidence will be perused with attention, and not without advantage.]

The surgeons who viewed and opened the body being called, *Mr. Skillard* was first examined.

Did you see the body of *Sir E. Godfrey*? Yes, I did view the

* State Trials.

body. — When? what time did you see it? About twelve of the clock. — What day of the week was it? On Friday, the next day after he was found. — Did you observe his breast; how was it? His breast was all beaten with some obtuse weapon, either with the feet, or hands, or something. — Did you observe his neck? Yes, it was distorted. — How far? You might have taken the chin and have set it upon either shoulder. — Did you observe the wound? No; for then there would have been some evacuation of blood, which there was not. And besides, his bosom was open, and he had a flannel waistcoat and a shirt on; and neither those, nor any of his clothes, were penetrated*. — But are you sure his neck had been broken? Yes, I am sure. — Because some have been of opinion that he hanged himself; and his relations, to save his estate, ran him through; I would desire to ask the chirurgéon what he thinks of it? There was more done to his neck than an ordinary suffocation; the wound went through his very heart, and there would have appeared some blood if it had been done quickly after his death. — Did it appear, by the view of the body, that he was strangled or hanged? He was a lean man, and his muscles, if he had died of the wound, would have been turgid†: and then, again, all strangled people never swell, because there is a sudden deprivation of all the spirits, and a hindering of the circulation of the blood‡. — How long do you believe he might be dead before you saw him? I believe four or five days. And they might have kept him a week, and he never swelled at all, being a lean man. And when we ripped him up, he began for to putrify: we made two incisions to give it vent, and the liquor that was in his body did a little smell, &c.

Mr. Cambridge's evidence was the echo of the former. Being asked if the neck was *broke*, and answering that it was *dislocated*, the attorney-general (Sir William Jones) replied, “Why that is broken.”

[On the subsequent trial of *Thompson, Pain, and Farnell*, for publishing letters asserting that *Sir E. G.* had murdered himself; the following very consistent evidence was given by one LAZINBY, whose qualifications are not set forth, but who was called to say *whether men who kill themselves look as Sir E. Godfrey did*. His account of the matter would hardly disgrace an accomplished medical jurist of the present day.]

“He appeared to me to be *strangled*, and that which strangled him was kept about his neck till cold. People that are hanged, and let down while warm, the blood drains away by the vessels that are broken, and their faces are rather less, and their faces become very

* In the older reports of trials, we often meet with language that will hardly admit of construction. It appears to be so here — but the question and answer undoubtedly refer to the point, whether there were signs of the wound (for a wound there was) having been inflicted during life? See *Principles*, &c. p. 239, as far as concerns the appearances in the body.

† Would the consequence of a wound through the heart, with its probable profuse hæmorrhage, render the muscles turgid? Turgescence in such a sense can only be ascribed to blood.

‡ This is one of the many passages, necessarily copied, which actually mean nothing.

pale; but the thing wherewith he was strangled remaining about his neck, the blood could not drain away, but it made his face look bloody*. The two *Mr. Chases*, the king's apothecary, *was* there when I was there, and the blood that was some four yards from the ditch, I put my finger in it, and smelt to it, and it smelt like that which comes from a body after a fortnight's time dead, rather than a week's. My Lord, it was blood and water; the water will separate from the blood.—(*Sir F. Winnington.*) But you believe he was strangled? Yes, his neck, from this place hither, [*pointing to the upper part of his own neck, and then to his stomach and breast,*] was very much discoloured and black, and his mouth was discoloured. Now, whenever a man is bruised whilst he is alive, or whilst he is warm, that part, after the person is dead, will soonest corrupt.—(*Lord Chief Justice.*) It stands to reason that the bruised part will first corrupt? (*Lazinby.*) My Lord, after *Mr. Chase*, the apothecary, and I, had seen him at the white house, I went up to drink a glass of beer, and *Mr. Chase's* son unbuttoned *Sir Godfrey's* collar, which was more than I saw when I was come in, and, unbuttoning the collar, there were two great creases both above and below; so they sent for me down for to come and see it, so I put the collar together, and I perceived the collar made the mark like a straight ring upon a finger, the neck being swelled above the collar and below by the strangling with a cord or cloth†.

DEATH BY STRANGULATION.

Case of PHILIP STANDSFIELD, tried for the Murder of his Father.
Edinburgh, 1688 ‡.

James Muirhead, chirurgeon, aged 32 years, married, purged, and sworn, depones — that after the deponent and *James Craufurd*, chirurgeon, had opened the corps about the neck, and sewed it up again, and put on again the clean linnens, in doing whereof they were obliged to shake the body to and fro, and move the head back and forward, the deponent desired that the friends might lift the body and put it in the coffin, and that the pannal having come and lift up the head, he did let it fall upon the table suddenly, and that it made a considerable noise at falling, and that the pannal retired back quickly, rubbing his hands on his breast, crying, O God! O God! and some such other words: and that the deponent being astonished thereat, looked to the corps, and, as the pannal did take away his hand from it, did see it darting out blood thro' the linnen, from the left side of the neck, which the pannal touched; and that the deponent was amazed at the sight, partly through the darting out of the blood, and

* What is the amount of praise due to M. Esquirol for having, the other day, instructed us in a matter so familiarly known, and so accurately accounted for, by a man evidently of no *learned* cast, roaming among the rabble of Charles II.'s retainers? See the Principles, p. 233.

† I am sorry to acknowledge, that the perspicuity of this witness's statement seems here to leave us.

‡ State Trials.

partly through the apprehension he had of the murder*. Depones, he saw nobody touch the left side of the defunct's head, the time it bled, but the pannal: depones, that as soon as the deponent recovered out of his amazement, he cried to the boy to give the pannal some triacle-water, which he did; but depones he did not see *Philip*, the pannal, return again to the body of his father. Depones, when the deponent and the other chirurgion were putting on the clean linnens, and stirring and moving the head and craig [neck], he saw no blood at all. And this is the truth, as he shall answer to God.

Sic subscribitur

JAMES MUREHEAD.

James Murehead and *James Craufurd*, chirurgions, give in their report and declaration in write, anent the murder of umwhile [the late] *Sir James Standsfield*, which they renewed upon oath, in presence of the justices and assizers, and whereof the tenor follows.

November 30th, 1687.

We viewed the corps in Morum church.

Edinburgh, December 1st, 1687.

We, under subscribers, *James Craufurd* and *James Murehead*, chirurgions in *Edinburgh*, having order from *Sir John Dalrymple*, his majesties advocat, to go to *Morum*, and there take up the corps of *Sir James Standsfield*, and to sight and view the same exactly, and, if need were, to open up the body, and to consider whether there appeared any evidence of wounds, bruises, or strangling upon the corps, besides what might have happened by his falling, or drowning in the water, &c. In obedience thereto, we caused take up the said corps in the presence of *Philip Standsfield*, *Mr. Andrew Melvil*, minister of *Morum*, *James Hamilton*, writer to the signet, *James Row* and *Alexander Campbell*, merchants in *Edinburgh*, *Umphray Spurway*, *James Dick*, *James Mitchel*, and *John Robertson*, indwellers in *New Milns*, and some others. Having, with all possible exactness, viewed the corps, we observed the face a little swelled, and inclining to a dark reddish colour; some fulness of some capillarie veins in the pallat of the mouth towards the uvula, as also a large and conspicuous swelling, about three inches broad, of a dark red or blae colour†, from one side of the larinx round backwards to the other side thereof; we observed the jugular veins on both sides the neck very large and distended, and full of blood; there was a large swelling under and betwixt the chin and cartilago scutiformis; there was also a little scratch below the left mandibula, which had rankled the cuticula, and made some little impression on the cutis. Having made incision from the chin down about the larinx, and cross upon the swelling of the neck, we found a greater laxness and distance (as we think) than ordinary between the cartilago scutiformis and the os hyoides‡; we found the tumour on the neck containing bruised-like, dark or blackish blood;

* This superstitious notion, of a body understood to be murdered bleeding at the touch of the assassin, has been taken into account at a later period even than the above.

† A bluish purple—the bil, or whortle-berry, is in Scotland called the *blae-berry* from its colour.

‡ A very foolish refinement to be noticed in a deposition.

the jugulars, when cut, bled considerably, especially that on the left side.

Having opened his breast, we found the lungs distended to the filling up their capacities, but free of water; his stomach, liver, &c., were all in good condition; we found no water within the corps; the corps had no smell at all; the breast, belly, privy parts, &c. were all well-coloured; there was no swelling in his belly, nor any thing by-[extra-] ordinary to be seen on his head. This we attest, and subscribe with our hands.

Sic subscribitur { JAMES CRAUFURD,
 { JAMES MUREHEAD.

Edinburgh, December 6th, 1687.

In the presence of the *Lord Archbishop of Glasgow, Lords Tarbart, (president of session,) Advocat, and Castlehill:*

James Murehead and James Craufurd, chirurgions, being solemnly sworn, in the presence of the Committee of Council, depone,— That the written report anent [concerning] the body of the deceast *Sir J. Standsfield* is true, according to their skill, &c.

* * * * *

Follows the Chirurgions of *Edinburgh*, their Opinion anent the said Murder.

We, under-subscribers, chirurgions in *Edinburgh*, having fully considered the report made by *James Craufurd* and *James Murehead*, concerning the condition of the corps of *Sir James Standsfield*, and, though it be not usual to declare more than matter of fact, yet, in obedience to your Lordships' commands, where ye desire to be informed if these symptoms found upon the body do import drowning or strangling; we humbly offer our opinion, so far as our art or experience will allow. And whereas the report informs us, that there was found a swelling and preternatural redness in the face, a large conspicuous tumour, about three inches broad, of a dark-red or black colour, from the one side of the larinx round backwards to the other side thereof * * * * * [repeating the words of the preceding report]. It is very probable these parts have suffered some external violence, which hath made them appear so far different from their natural figure and colour, and could not be caused by drowning simply. As to the other part of the report, the breast and belly being opened, the lungs found distended, the bronchi full of air, without any water, nor any water found in the stomach or intestines, a body when drowned being generally found to have much water in it, with other circumstances of the report considered; give just ground to think he was not drowned.

JOHN BAILLIE, Deacon.	W. BORTHWICK.
GEO. STIRLING.	TH. EDGAR.
JAMES CRAUFURD.	JAMES MUREHEAD.

Follows the Report of the College of Physicians.

Edinburgh, February 6th, 1687.

The College of Physicians being assembled at the desire of his Majestie's Advocat, to consider a report made by some chirurgions concerning the body of the late *Sir James Standsfield*, and to give

their opinion, whether by the said report there is any just ground to believe, that the said *Sir James Standsfield* was strangled or drowned. And they have accordingly considered the said report. They are of opinion, supposing the verity of the said report or declaration, that there is sufficient ground to believe that the said *Sir J. S.* was strangled, and not drowned. In testimony whereof, these presents are subscribed by *Sir Andrew Balfour*, president of the said college.

Case of MARGERY BEDDINGFIELD and RICHARD RINGE, tried for the Murder of JOHN BEDDINGFIELD, at Bury St. Edmunds, 1763.*

William Masterson sworn. You was servant to *Mr. Beddingfield*?

Yes. * * * *

What did you see when you came into your master's chamber? His face lay towards the bed; he lay with his body against the bed's feet; he lay upon his stomach.—How did he appear? With his hand in this manner, [*witness describes it with his hand on his throat*].—Where was the other hand? Under his side; the bolster and pillows were all upon the ground, at the foot of the bed.—Were the bolster and pillows on the bed? Yes†. — And the tick and matting? Yes.—Where did the quilt and the sheets lay? Upon my master's feet. The end of the curtain-rod lay upon the bed-side, and the other where it should be.—Did you touch your master? Yes.—Was he cold? He just began to grow cool. His legs from the ancle were pretty tidily stiff.— * * * * How was the shirt? Turned up from his back on to his shoulders.—The lower flap was turned up to his head? Yes.—Did you see the collar? Yes.—Was it unbuttoned? One button. It was unbuttoned: two buttons were off.— * * Did he look black? Yes, tidily black.—Did you see his neck? Yes.—How did it look? Very black.—Where? All about the fore part.

Mr. Sparham sworn. You are a surgeon? Yes.— * * *

Did you see the body? * * I turned the covering down pretty low, to the waist; I found no marks, only it was much swelled, as any dead body is.—Did you go higher up in his body? I viewed his neck; after that I was at a loss. I saw such marks as I never saw before. I have seen bodies from the hall marked all round. Here were marks with fingers on the one side, and a thumb on the other, with scratches, as if it had been done with a person's nails.—You had been used at London to see subjects with black marks that had been hanged? Yes; I was at a loss then, because it was not a round regular mark, but two.—What was that? Fingers on one side, a thumb on the other, with proper distances between each.—How many fingers? *Three and a thumb*.—Any scratches? Such as are made by the nails of a person. There was a slight redness upon the wind-pipe, but not such as is made by fingers.—If fingers were applied as you saw, to occasion them, would a force applied to them have prevented a man from breathing? A man could not do it himself; another might by continuance, and by a perpetual squeezing.—Suppose no resistance is made, if a man takes another with his fingers in that

* From "the Genuine Trial, &c., taken in short-hand."

† Incomprehensible.

manner, would it prevent his breathing? Yes, if it was continued.— Suppose a man was asleep, and was seized in that manner, what would be his defence? He could make very little.— * * * From what you saw of that subject, do you believe he died a natural death? I think they were marks of violence. — Do you think you saw marks enough to impute his death to violence? Yes, *by what I have heard since* *.— * * *

(Cross-examination.) Did not the coroner tell you, that you was sent for to give your opinion to the jury, how this man came by his death? I believe they told me; they did not swear me. — What opinion did you give? They told me his hand was under his throat; and the marks might come from the fingers and thumb, and not sufficient to occasion his death. — Did you give an opinion that he died a natural death? No, I cannot say I gave any opinion.— * *

* If you never had any suspicious circumstances to induce you to think there were acts of violence committed, should you have changed your opinion? I find I was out in my opinion. I thought so that evening. I thought I was too slender in my opinion. I thought I had been deficient in my judgment upon the report.— * * *

(By the Court.) Suppose a man is seized with an apoplexy, or any fit that occasions his death, what appearance would the *neck and face* have? In apoplexies, they have froth in the *mouth*. — Is the face ever black and swelled? A little livid colour. — Would it not be black? No. — Is there any sudden death, natural death, that will give a man a blackness and swelling in the face? No. — Is there any kind of natural death that would occasion the neck to appear black? No. — Suppose a vein broke in the neck, would it make the face and throat black? No. — Did you ever know an instance? No, I cannot think it. — Is it in the power of any man who catches another, a strong man, in his sleep, by the throat, to hold him long enough to throttle him? Yes, *the fingers were on the left side*. I AM NOT CLEAR AS TO THAT. — Are you clear that the marks of the fingers were distinct? Yes. — What colour was the other swelling between these marks? Reddish. — How long did you view this body? I WAS NOT THERE FIVE MINUTES. — Could not a man, thus seized, lift up his hand, and put the other's away? Yes.— * * *

Mr. Edgar sworn. How long have you attended the hospital? About four months.— * * * You examined the body? Yes, his face and trunk too looked black. — Did the trunk look remarkably black? I think it was preternatural; I never saw any thing look so black. — What other appearance? Very distinct marks of a thumb and *four fingers*.

This witness gave it as his opinion, that the deceased died of the violence indicated by the marks.

William Alston, a witness for the prisoners, saw *reddish* marks on one side of the neck; which afterwards looked as if the blood were set in the skin, and were *two in number*.

They were both found guilty; and, previous to his execution, Ringe confessed that he went to his master's bed-side, found

* Rather a curious answer; as it does not appear that he had heard the grounds of his opinion in court.

him asleep, threw himself upon him, and caught hold of the fore-part of his throat, as he believes, with his left hand; that he thereby endeavoured to strangle him; that the deceased struggled much, in the course of which they both fell from the bed; that by the fall he lost his hold, but immediately afterwards regained it in the same place, and soon killed him.

DEATH BY WOUNDS, BRUISES, &c.

UNDER this head, (which follows the preceding subject in the order of arrangement observed in the Principles,) will be found many useful lessons, respecting a class of injuries exceedingly frequent in their occurrence. I have observed the same arrangement in the details; beginning with injuries of the head, and proceeding downwards, as regards the parts of the body.

Case of WILLIAM TIPTON, tried for the Murder of WILLIAM WALKER, by throwing him out of a Window. Old Bailey, 1760.*

Mr. Pott. I am surgeon to St. Bartholomew's Hospital; the deceased was brought in there on the 15th August last. I saw him in about an hour after he was brought in, and found him quite senseless, with a very considerable bruise on the fore-part of his head *

* * I had great reason to conclude his skull was broke, and on removing the scalp I found it so, in two places. * * I trepanned him immediately.—What is that; it is necessary the jury should know? That is making a hole in the skull, and taking a piece out.—When did he die? About the middle of October.—What did he die of? Of that fractured skull.—Are you certain of that? I have not the smallest doubt concerning it.—Could you make any judgment whether he was fuddled at the time that he received the fracture? It is not possible in those cases, to distinguish that, for the symptoms produced by the pressure of the bone, so totally deprive a man of any kind of voluntary action, that it is impossible to know whether he was fuddled or not.—Did you ever hear him make any declaration? No.

(Cross-examined.)—From the nature of the fractures, and the trepanning, do you think he could be in his senses, so as to know what he said? That is impossible for me, or any body to answer. I could run over a great many hard words, but I cannot answer that. * *

* From the Sessions Papers. This case is chiefly interesting on account of Mr. Pott's appearance as a medical witness.

*Case of CHARLES MACKLIN, tried at the Old Bailey, May 10, 1735,
for the Murder of THOMAS HALLAM*.*

Mr. Coldham, surgeon. — I was sent for and dressed the deceased. He died next day, and I opened the skull, and found the stick had passed through the thin bone that contains the eye, into the brain. The bone is extremely thin, and can make but little resistance. Had the blow been elsewhere, it might have had a less fatal effect. I was astonished that a man should die by such an instrument.

* State Trials. A trial for murder, by thrusting a cane through the orbit into the brain, was tried some years previously, and is also reported in the State Trials. I allude to the affair of Dangerfield. See the Principles, p. 275.

Macklin's own account of the case, given as his defence, may be perused or not, as the reader thinks proper. I insert it merely as a curiosity.

"I played Sancho (in the Fop's Fortune) the night before, and the wig I then used was proper for the new play, and absolutely necessary for my character; *the whole force of the poet's wit depending on the lean meagre looks of one that wanted food.* This wig, therefore, being so fit for my purpose, and hearing that the deceased had got it, I said to him, 'You have got the wig I played in last night, and it fits my part this night.' 'I have as much right to it as you have,' says he. I told him I desired it as a favour; he said I should not have it. 'You are a scoundrel,' says I, 'to deny me, when I ask that as a favour which is my right.' 'I am no more a scoundrel than yourself,' says he; and so he went out, and I went to the prompter's door, to see for Mr. Cibber. Meanwhile the deceased went into the scene-room, and said that I had used him like a pick-pocket. The author persuaded him to let me have the wig, and the property-man brought him another wig. He threw the first wig at me. I asked him why he could not have done that before. He answered, 'because you used me like a pick-pocket.' This provoked me, and rising up I said, 'd—n you for a puppy, get out.' His left side was then towards me, but he turned about unluckily, and the stick† went into his eye. 'Good God!' said I, 'what have I done?' and threw the stick in the chimney. He sat down and said to Mr. Arne's son, (who was drest in woman's clothes,) 'whip up your coats, you little b—h, and urine in my eye;' but he could not, and so I did. I begged them to take the deceased to the bagnio, but Mrs. Moore said she had a room where he should be taken care of. I had then no thought that it would prove his end, but feared that his eye was in danger. But next morning I saw Mr. Turbut, who advised me to keep out of the way, or else I should be sent to jail. I begged him to get the assistance of a physician, and gave him a guinea, which was all the money I had. From the beginning of the quarrel to the end, it was but ten minutes, and there was no intermission."

Guilty of Manslaughter.

† The stick was necessary for the part the prisoner was to act.

Case of DR. THEOD. CHRIST. FABRICIUS, tried at the Old Bailey, 1721, for the Murder of GRACE SHAW.*

The indictment stated that he had murdered the deceased by striking, wounding, and bruising her with a wooden staff, on the head, face, neck, back, and belly. One of the witnesses described him as a *mad doctor* †, and the deceased as living with him in the capacity of a servant. He had been seen to strike her repeatedly, and (according to evidence) with great brutality.

Mr. Troughton. * * * * She had an imposthume in her ear, and being in the kitchen one Sunday, between eleven and twelve o'clock, the Doctor broke it with a blow of his hand, so that the blood and matter ran out. He was not then in a passion, but what he did was, as I thought, only with a design to open the imposthume ‡.

Mr. Fremoult.—I went to view the deceased, and found her head, her temporal muscles, and her ear contused. She had a bruise too betwixt her shoulders, a small wound on her lip, and had lost a tooth. 'Tis my opinion those wounds and bruises were the occasion of her death.

Prisoner.—Did you see any single wound or bruise about her that was mortal? I cannot say that.—Had she not an imposthume in her ear? Yes.—And might not that alone have proved the cause of her death? I can't say but it might: 'tis true that her temporal muscles were much contused, but then I found no fracture.—Of what shape are the temporal muscles? To this witness made no answer.

In his defence the prisoner described her as a lunatic patient, stating that she used to create great alarm without cause—that she was subject to fits—that she was bruised by falling down stairs upon her face. It was sworn that she had been taken to be cured for what service she could render, being at the same time described as a furious maniac!

Mr. Seadon.—The deceased had several inconsiderable bruises on her face, head, and neck—that on the ear was bad; but whether or no

* From "Select Trials at the Old Bailey."

† This term would here admit of a double interpretation perhaps; but the witness seems to have been free from waggery, and to have intended the designation in the ordinary vulgar sense.

‡ Mr. Troughton having given this *odd* opinion upon oath, we are bound to believe that he entertained it; but it looks like stretching a point. Here I may appropriately call the reader's attention to the subject of surgical operations, connected with the performance of which, sundry questions of judiciary import may arise. Some of these are noticed in the Principles, (p. 395 and seq.) and in addition to the consideration of the circumstances under which a surgeon may be warranted to interfere with the integrity of a patient's person, the case above illustrates the propriety of attention as to the *manner*. Most assuredly the ruffian (for he would deserve no other name) who should attempt to open an abscess by hitting it a blow, ought to be brought to the bar of justice, to answer for such brutality.

it was from an imposthume, I cannot be certain. There was no fracture in her skull, nor any wound that affected her life.

Mr. Tanner.—I, and the surgeons on the king's side, were present at the same time; * * * there was nothing that appeared fatal or injurious.

Mr. Simmons corroborated these statements.

Verdict — *Manslaughter.*

The case was evidently one of those abuses that so long and so loudly called for legislative interference, without which, no effectual reform would ever have taken place.

Case of RICHARD PARROT, tried at the Old Bailey, Oct. 1761, for the Murder of his Wife, by cutting out her Tongue.*

Mr. William Frogley, surgeon of *Hounslow*, who had attended the deceased, described her situation, and proved that part of the tongue had been cut out. She gave him to understand, (and it was proved by other witnesses,) that he had made her put it out by threats of ripping up her belly. She lived from Sunday till Wednesday.

Q. What was the cause of her death? I cannot be clear in that; whether the vomiting, or purging, (which she had for two hours,) or that of cutting out the tongue. The justice was with me; he asked my thoughts: I said to him, indeed I cannot be clear; she had a fever, but whether that was occasioned by her vomiting and purging, or whether those disorders came on of themselves, I cannot say, as she was in a weak state; and by the loss of blood, the diseases might carry her off the sooner. — Was there any putrefaction? There was a scurf upon her tongue, but the heat of the fever might cause that; but I could not get at it directly, to see what it was. — Would not the great loss of blood bring on a fever? — Loss of blood generally prevents a fever. We empty the vessels in such a case, that no inflammation may succeed. — Does not a wound often cause a fever? It often does cause a great fever; that is the reason we make evacuations, in order to prevent that fever. — Did you see any bruises on any other part of her body? I asked her if she was bruised; she told me he had kneeled upon her, had tumbled her down, and they had a struggle together. — Could not that kneeling upon her bring on a fever? I did not find any fever upon her till the Wednesday; she said he had broke out four of her teeth, in attempting to cut out her tongue. — Did the tongue appear to be cut out? It did, within the mouth.

The woman who nursed her, described the tongue as *cut out to the root, all beyond the guides underneath*†.

The prisoner was hanged, although there was a supposition that he was subject to insanity.

* Sessions Papers.

† If so, there must have been great difficulty in making herself intelligible. The case does not belong to those noticed in the *Principles*, p. 476.

Case of SARAH MALCOLM, tried at the Old Bailey, Feb. 1753, for two Murders.*

Thomas Bigg, surgeon, sworn. — *Mr. F.* came to me to go with the coroner and view the bodies. In the first room I found the young maid, *Ann Price*, lying in bed with her hair loose, and only her shift on. Her chin was fixed down, as if done with a design to hide the cuts in her throat. I lifted her chin up, and found three incisions; one of them was not mortal, but the middle one divided the windpipe, which was cut three parts through, and either this or the third wound was sufficient to cause her death. Wounds in the windpipe, indeed, are not always mortal, for they may sometimes be cured; but in a case like this, where the great vessels were cut, the unavoidable consequence must be death. She had no head clothes on, and her hair was loose, and she seemed to have struggled hard for her life. * * *

The next body I viewed was that of *Elizabeth Harrison*. She was strangled, and it appeared to have been by some narrow string, as an apron-string, or a packthread†. It was pulled so tight that the skin was divided, and the mark very deep. There was likewise the mark of knuckles on her windpipe, and the blood had gushed out at her nose. * * *

The last body was that of *Mrs. Duncomb*. There was a little crease about her neck, which was just enough to give a suspicion that it was made by a string being tied round; but the mark was so small, that had she not been very ancient and weak, that a little matter indeed would have put an end to her life, one could hardly have thought that to have been the cause of her death. — *Counsel*. Did you see the strings on the apron? Yes; they were bloody at the ends. — *Prisoner*. Might they not have been murdered with those strings, and no blood appear in the middle? They might have been strangled without making the strings bloody at all. But the strings being bloody only at the ends, which, when the apron was tied on would hang before, the blood might come upon them in the same manner as upon the rest of the apron; or it might be, by folding the apron up before it was dry.

In her defence the prisoner denied the murders, laying them to the charge of two men and another woman, but acknowledged a robbery committed at the same time. Certain appearances on her clothes she ascribed to a natural cause. Great noise was made about this case at the time, and all the periodical publications contain copious details.

* State Trials.

† The mark left by either of these ligatures could hardly be mistaken for the other, if the apron-string was tape.

The Case of COLONEL FULLER, tried at the Old Bailey, for Killing ADAM CLUFF, by a blow on the breast, with the butt-end of a musquet, 1737.*

Mr. Westbrook. — I was applied to by the churchwardens of the parish, to attend the inquest : I had notice that the body was prepared, and was ready for us. When I came to the churchyard I had some conference with the rest of my brethren ; most of them were of opinion that we ought to let the body alone ; that it was not safe for us to meddle with it, on account of our healths ; that the body had been buried so long, (twelve days,) that we could make no discovery, and that we should endanger ourselves besides. But, however, I ventured, and opened the body with the greatest circumspection. The outside was very putrid. By the hint I had, I judged the damage was agreed to be in the breast only, so I opened it ; but I found nothing that seemed to be the effect of violence, which could be the occasion of his death. 'Twill not be amiss to acquaint the court what we thought would be the appearance, if the deceased had received a punch that had occasioned his death, viz. fractured ribs, or extravasated blood in the inside of the body ; but there was neither. * * * *

After I had taken the flesh clean off the ribs, I split them down with my knife, and made my man break them off ; and every one of them snapped loud and strong, which they would not have done if they had been fractured. The chest was free from extravasated blood ; but upon further inquiry, I found an appearance of matter upon the membrane of the breast—perhaps half an ounce, or something more. Some of my brethren turned their heads away, on account of the stench, and did not observe this ; but I called to them, that they might judge of it. They disputed a little while, whether it was matter or not ; they thought it might be some little quantity of fat ; but I shewed them plainly, it was impossible it should be fat, and that it was matter. From the circumstances of the case it is plain, that this matter was the consequence of an inflammation on the *mediastinum*, near the middle of the cavity of the breast ; and I apprehend, by its being far removed from the ribs and the breast-bone, that it was not occasioned by an outward blow. * * * * Suppose a blow given on the middle of the thorax, might it not occasion the matter ? I think that is not the case. On the bending in of the ribs by an outward blow, the lining of the breast may be strained, and an inflammation may happen on that part where the blow was given. This membrane divides the breast across. I verily believe that this matter did not proceed from any outward blow. It was the effect of an inflammation, and not of any blood spilt. 'Tis possible, indeed, that blood, in a fortnight's time, may occasion matter, but that was not the case, because the lining of the breast kept the matter in a suspended way : it did not fall down into the bottom of the cavity. * * * *

The opinion of this witness, and of several other medical men, was, that the deceased had died a natural death. He had been under treatment for an inflammatory complaint in the

chest, which, in the opinion of the surgeon who had the charge of him, was the cause, — and so the jury found.

Case of the EARL OF WARWICK, tried for the Murder of MR. COOTE, in the House of Peers, 1699.*

Mr. Salmon sworn. Pray, Sir, was you ordered by the coroner to view the body of *Mr. Coote*? Yes, I was ordered by the coroner to inspect the body of *Captain Coote*, and to give the jury an account of the nature of the wounds. — Pray, upon the view of the body, what wounds had he? There were two wounds, one on the breast near the collar-bone, running downwards very deep. — Pray what part of the breast was it in? How deep was it? It was on the left part of the breast, near the collar-bone, and it penetrated four or five inches. — Can you guess at what sort of sword it was that made the wound? No, indeed, Sir, I cannot. — Was it a broad sword or a little sword? The orifice was about the length of half an inch, and about the depth of five inches. — Was that made with a broad sword, or with a narrow sword? Indeed I cannot tell. — You say he had another wound, where was that? That was on his left side too, near unto the short ribs, under the last rib, which was about the length of an inch, and of the depth of six inches, and it run through the diaphragm. — Did you take one of those wounds or both of them to be mortal? I did look upon either of them to be mortal, and to be the occasion of his death. — Can you tell whether they were both made with one and the same sword? Indeed I cannot tell that, whether they were made with one sword or two. — Cannot you tell how they appeared: I suppose you probed them? Yes, I probed them both; one was quite through the diaphragma. — What time was it that you viewed the body by order of the coroner? I saw the body at seven o'clock on Sunday night. * * *

Earl of Warwick. Whether any of the wounds were large enough to be made by a sword run up to the hilt? No, my Lord, I am sure they were not. — *Earl of Warwick.* I desire to know, whether both these wounds were given before or behind? I can only tell you the length and depth, by following of the probe: the one was downwards, and the other upwards. — *Attorney-General.* Do you suppose both these wounds were given when the person was standing backward, or forward? 'Tis impossible to tell how they were given, because of the variety of the postures of the body, in the divers capacities thereby of receiving the wounds. — Pray can you tell whether they were given by one and the same sword, or no? Indeed I cannot tell. — Do you know any thing to the contrary? I cannot say any thing for it, or against it. — *Earl of Kingston.* My Lords, this witness, if I apprehend him right, says the wound on his side was a large wound? Yes, a very large wound, of the length of about three quarters of an inch at the

* State Trials. The lesson given in this case regards the duty of the surgeon as to acquainting himself with the nature of the weapon, or instrument, by which a wound or injury may have been inflicted.

orifice, and five or six inches deep. — *Earl of Kingston*. I desire he may tell, whether that wound could be given by any other than a broad sword? I cannot tell that. — *Earl of Rochester*. Indeed, my Lords, I would have him asked this question again; I know not whether he can answer it, or no; but I cannot but think it is proper to have some account of this matter. In all inquiries before the coroner, there is a judgment to be made of the nature of the wound, in order to form the indictments, and that the jury may know with what sort of weapon it was made; and it is his profession, as a *chirurgeon*, to know such matters.

Lord High Steward. *Mr. Salmon*, You hear what is required of you by my noble Lords, and the observation which is made. You are the *chirurgeon* sent for by the coroner on purpose to inspect this body, and, when you did so, it was incumbent upon you to consider and give information, as well with what sort of instrument the wound was given, as the length and depth of the wound, that the jury might consider upon all the circumstances of the occasion, and manner of the party's death: and my Lords would know, whether by the orifices of the wounds, when you inspected them, you can make a judgment if they were made by several swords, or the same sword? *Salmon*. I cannot say, that I saw any difference between the orifices, as to the nature of the instrument they were given with, nor whether they were made by one and the same sword, or no, only the one orifice was bigger than the other; that of the side was bigger than that at the collar-bone. — *Lord High Steward*. Then so far we have light, (if I apprehend you rightly); the orifice of the upper wound was not near so wide as that of the lower; but it seems to be much, in one of your profession, not to be able to judge whether the wounds were given with the same sort of sword, when there was such a difference in the orifice? *Salmon*. That below was a deeper wound; and there was a considerable difference between the largeness of one and the other. — *Lord Audley*. My Lords, I desire he may tell your Lordships, how far backward the wound in the side lay? It was directly on the left side, immediately under the two last ribs, and passed through the diaphragma. — *Marquis of Normanby*. Pray, my Lords, let him point with his finger whereabouts it was? * * — *Earl of Warwick*. It is a very material question for me that he should answer, whether he did believe that one and the same sword might not give both wounds? *Salmon*. I cannot say any thing of it, one way or other; but one wound went much farther than the other, because it was in a fleshy part; and, in such a case, the further the sword goes in, it makes the wound the larger.

Case of the EARL OF PEMBROKE, before the House of Peers, April 4th, 1678, for the Murder of Mr. CONY.*

Mr. Jackson (who had been previously examined as to his personal knowledge of the deceased, and who must have been a surgeon, though that is not adduced on the trial,) was called, and thus questioned.

* State Trials.

Were you present at the opening of *Mr. Cony's* body? Yes.—What did you see there? There was an extraordinary quantity of extravasated blood in the lower part of his belly.—How might that come? Might it not proceed from a natural cause? I believe it came from some bruises given him, and from some violences that were done to him.—In the belly was it? Yes, in the belly.—You saw then; did you see any swelling there? Yes, and the diaphragma bruised*.

Dr. Lomer, one of the witnesses for the prisoner, who was called to account for the appearances in the body, had declined being present at the dissection, in order that he might not become qualified to bear testimony†. He was asked, (among some less curious questions,) by the Lord High Steward —

Can any man be mortally hurt and bruised, whereof he may languish, and not have a fever? According to my knowledge and experience, my Lord, usually and most commonly upon a mortal bruise an inflammation follows, and that inflammation causes a fever, which will be evident in the patient's pulse, or tongue, or water; but none of these I found so affected with *Mr. Cony*.

Mr. Raven examined. I viewed the body, my Lord, before, and when it was opened, and it was reported to me that there was a bruise in each side of the belly; of which, thereupon, I took a stricter view, and could find no blackness nor blueness, nor marks of bruises; upon which the body was opened, and there issued thence clotted blood: then I looked upon the caul, which was withered and consumed, and the heart was as loose as a rag, and his lungs stuck to each side of his ribs; and as to the matter of the blood, that was not an extraordinary thing, for it is known to physicians, that *in all natural deaths there MUST BE extravasated blood in the lower belly!!*

Lord H. S. How did you think there came to be that quantity of blood there? This blood, I think, my Lord, must be extravasated by the violence of his gripes, for it is proved he drank a great quantity of claret, and afterwards of small-beer, which set the blood upon a fermentation, that set him a vomiting. By the violence thereby used to nature, this blood was thrown down into the belly; but in all natural deaths, if there be not so great a consumption of the blood, that there is none left, there must be some extravasated; it is a clear case‡.

* These *sagacious* questions were all put by *Sir William Jones*, the attorney-general.

† See the text above, page 132.

‡ If scientific hypothesis, or rather mystified jargon, can be brought under the designation of "*hard swearing*," one would be inclined to shew this as a specimen.

Case of JAMES CARNEGIE, Esq., tried for the Murder of LORD STRATHMORE. Edinburgh, 1728.*

William Douglas, late provost and chirurgion, apothecary in *Forfar*, deponed — that on the 9th of May last, at nine o'clock at night, he was called to the *Earl of Strathmore*, who had got a wound; and having panned and dressed the wound, he found it went in about three inches and a half above the navel, and came out to the back-bone about two inches below; that he first dressed the wound in the belly, and then that in the back; that the Earl having asked his opinion of it, he said he was not without great hazard, and desired more assistance; whereupon an express was despatched to *Dundee* for physicians; that the deponent thought the wound mortal, and did not think any could recover of that wound; the Earl lived about forty-nine hours thereafter, and died of the aforesaid wound. The Earl said to him, that *Finhaven* (*Carnegie*) had given him that wound, and that after he gave the first thrust, he pressed the pommel of the sword forward with his breast; and it was the deponent's opinion, from what he observed, whatever sword had given that wound was either rusty, or had a nitch [notch] in it, which brought out the omentum without the belly; and the deponent, after having seen the sword which was called *Finhaven's* sword, he perceived a nitch in it, some more than a hand brode [breadth] from the hilt.

The depositions of *Thomas Crichton*, chirurgion-apothecary, and of *Dr. John Wedderburn*, physician, both of *Dundee*, corroborate the preceding as to the description of the wound, and represent *Carnegie* as being a good deal taller than *Lord S. Wedderburn's* deposition states that, having seen the body opened, it appeared that the weapon had passed through the caul, colon, and plexus mesentericus.

Case of RICHARD LAMB, tried at the Old Bailey for the Murder of WILLIAM KENDAL. 1759†.

Charles Carson. I am a surgeon. I saw the deceased about eleven in the forenoon in the Infirmary. I was informed the accident happened over night, and he was brought in with his bowels out; he was alive; saw a large quantity of intestines lying on his belly, and the man in great agony. I could not see the wound then, but when I replaced the intestines, I saw the wound; it was about an inch in length. *

* * Do you call it a mortal wound? It is my opinion that it was the cause of his death; he lived about an hour and a half after I saw him. — Is there not always a surgeon there to attend upon people that are brought in? Yes, there is. — Was not the intestine replaced before you saw him? No. — Could this man's life have been saved had the intestines been replaced at his first being brought in? It is impossible to say that. — What is the surgeon's name that took him in? His name is Davis. — Did you find no bandage upon the wound? No, but a vast quantity of intestine out, which then had

* State Trials.

† Sessions Papers.

not mortified, but it was pretty near it. — Are you an appointed surgeon to this Infirmary? I am. — It is your duty to advise your superiors of this neglect of Mr. Davis's. * * Suppose the wound had been enlarged, what would have been the consequence of that? That was the only way to have him do well; that would have been the proper treatment of it, so to return the intestine; had that been done at his first coming in, there might have been a possibility of saving his life *.

GUNSHOT WOUNDS.

Case of COUNT CONINGSMARK *and Others, tried for the Murder of*
MR. THYNN. 1682†.

Mr. Hobbs sworn. Had you the searching of *Mr. Thynn's* body after it was hurt? Yes. — How did you find him? I was with him, Sir, that night he was wounded, and I found him shot with four bullets, which entered into his body and tore his guts, and wounded his liver, and his stomach, and his gall, and wounded his great guts, and his small guts, and broke one of the ribs, and wounded the great bone below. — * * Did he die of those wounds? Yes, he did die of those wounds. — Did you apprehend them all mortal, or any, or which of them? I believe there was never a wound but it might prove mortal‡. * * * What did you observe of the bullets; was there any thing done to them more than ordinary? I could not see any thing; I have them here, my Lord. — Were they iron or lead? (Then *Mr. Hobbs* delivered them into court.) Two of them, the little ones, may be iron; for one of them went through a thick bone, and yet there was no impression on it. — And this that has the impression you think might be done against the bones? Yes. — Was this left ragged on purpose to do the more mischief? Which, my Lord? — This that is left at the end here. Would this be more mortal than another bullet, or harder to heal? No, but as they take up a greater space in flying. — Would not the raggedness hinder the healing? No, only bruise the flesh, which bruised flesh must come away before it can be healed: all bullets wound by bruising of the flesh§. — Well, these were the four bullets

* This case presents a very circumstantial illustration of the hints given in the Principles, page 64. Several other surgeons were examined to the same point of probable recovery, if all proper means had been resorted to.

† State Trials. It might border on impertinence to do more than remind the reader of the monument in Westminster Abbey.

‡ I lately heard a learned barrister, in the Court of King's Bench, allude to an indictment, in which a person was stated to have received "a certain mortal wound, of which he died; and a certain other mortal wound, of which he would have died, if he had not died of the first."

§ This answer is in fact an affirmative one—lesions that bruise are less manageable than those that do not; and must be still more serious if accompanied with laceration. Modern Surgery knows little of iron *bullets*, (by which term in English is meant musket or

that were found in *Mr. Thynn's* body? I verily believe they are. *Dr. Lomer* had them out of my hands for a day or two, but I believe them to be the same.—Was there any lodged in the stomach? Yes, one of the little ones.—Had they broke the great bone? Yes, the great bone in the bottom of the belly.—Two of them? A great one, and a little one; two of them passed through that bone, and lodged in the back-bone*.

Case of REASON and TRANTER, tried for Murder. 1721 †.

Mr. Sparham sworn. Give an account in what condition you found the deceased, how many wounds, and of what nature? I found him labouring with a wound under the right pap, with a shot: upon this I examined him, and, putting him into a proper posture, I found several other wounds; one near the liver, the lower part of the eighth rib near the back-bone; several other wounds with a sword, three or four on his belly. Upon opening of his body, I found that the wound with the bullet had penetrated about nine inches towards the back, which wound was mortal; the first to be of the lungs, having a hole through, and the second to be torn, and the *diaphragma* wounded: I found one other wound with a sword near the eighth rib, three inches and a half broad, penetrating the thorax, and wounding the *diaphragma*, which was also mortal; I found eight other wounds with a sword, about a quarter of an inch wide each, and a quarter of an inch deep, one near the left pap; four others on the right side of the belly, two more on each side the back-bone‡.

So you looked upon two of the wounds to be mortal, one whereof was with the pistol shot? Yes, I saw two leaden pieces taken out of his body.—Who attended at the same time? *Mr. Gifford*.—Did he or you take out these bullets? We both took them out, I think!!

pistol balls only). In French the signification is reversed—*boulet* implies a cannon-ball, or round-shot—*balle*, that for small arms. The diminutive *et* being applied to the larger object, may appear a contradiction; but perhaps it is to be accounted for in this way. The game of *quilles* (nine-pins) in France is played with enormous wooden bowls, much larger than ours, or than cannon-balls could be used: artillery was the first form of fire-arms; and perhaps the shot were named from their wooden prototypes—if so, they were properly designated by the diminutive sign. But to return—it might be a question worth settling, which form of *bullet* (Anglicè) inflicts the most dangerous wound?

* I cannot pretend to understand what course is intended here to be described—unless the ball perforated the pelvis, and then lodged in the spine.

† State Trials—already quoted, page 24, note. I insert the statement of *Sparham* literatim, as given in *Hargrave*, by way of a specimen of what some men make of telling their own story. Consult the text, page 82.

‡ Counting these wounds is out of the question.

*Case of PETER NOAKES, tried for the Murder of W. TURNER.
Old Bailey, January 1732*.*

James Wilkie, surgeon. The wound entered at the right ear, and passed neither upward nor downward, but parallel †. The pistol was clapped so close to the head, that no powder appeared on the outside, but it all passed into the middle of the brain, and, being confined, had split the skull, and raised the upper part of it, so that I had no occasion to make use of a saw. The two bullets were lodged close to the left side of the skull, but had not perforated it.

John Serjeant, surgeon, was asked, Could a man, in shooting himself, hold the pistol so that the wound would not have gone more aslant upwards? That would be according to the position of his head, whether he held it upright, or leaned it aside.

Case of JOHN BARBOT, GENT., tried for the Murder of MATTHEW MILLS, Esq., in the Island of St. Christopher. 1753‡.

This was a case of killing in a duel. *Dr. John Webbe*, one of the witnesses, underwent a long examination, which does not relate to professional matters; but the commencement of it is worthy of insertion, both as matter of curiosity, and as illustrative of the practice in regard to expenses of witnesses.

Dr. James Webbe, sworn. *Dr. W.* Do you know the prisoner at the bar? Before I answer any questions, I pray the court will favour me with a word. I am brought down from *Nevis*, where I live, as an evidence on this trial, and I desire the protection of this court from any arrests that may be issued against me. I am a stranger in this island, and it would be impossible for me, if I was arrested, to find security. Another thing too, I am afraid of being assassinated. — *Solicitor-General*. This is not the country of assassins; they come from elsewhere. — *President*. What reason have you to apprehend being assassinated? Sir, I have been told there is an intention to assassinate me. — *Pres.* Who has told you so? I have heard it commonly reported, Sir. — *Pres.* Can you fix the intention on any particular person? No, Sir, but I am afraid of *Mr. Mills's* family in general; and I desire *Mr. Colhoun* will give me security, that I may go in safety from *Mr. Mills's* family to *Nevis*. — *Mr. C.* May it please your honours, if *Dr. W.* will swear that he is in danger of his life from me, or from any part of *Mr. M.'s* family, I am very willing to give him the security he

* Sessions Papers.

† If we are to be quoted as authorities for the meaning of words, (as in reference to the term *slit*, below,) it is incumbent to remark, that *horizontal* should have been that used here, not *parallel*. This term is always relative; and nothing is mentioned to which it could relate, unless we resolve it into *parallel to the horizon*.

‡ State Trials.

asks.—*Pres. Dr. W.*, you hear what *Mr. C.* offers; what say you to it? Sir, I cannot take upon me to swear any more, than that I have heard there is an intention to assassinate me.—*Pres.* It is very strange you should not know from whom you heard so! I did not hear it from any particular person; I have heard it commonly reported.—*Pres.* Well, then, unless you can charge some particular person, we can take no notice of it. Surely you would not have us bind over the whole island! Then, Sir, I desire I may have my expenses paid me, since I have been down here.—*Pres.* No, you cannot; for this is a prosecution at the suit of the crown, and, in that case, the witnesses always bear their own charges. With respect to your being arrested, the court will protect you from any arrests during their sitting.

Dr. Hamilton sworn. * * * Will you please to put your finger on the place, as near as you can guess, where the wound was received? It was just here [*placing his finger on his own side*]. I then, with the assistance of my son, opened the body, and found that the ball had entered between the two last false ribs, and splintered one of them, and had penetrated the body obliquely from the right to the left side, and had wounded the fore part of the liver on the left side. I found, too, that in passing it had wounded a large blood-vessel.—Do you think the deceased could have received that wound if he had been standing in a posture of defence? No, I think he could not; for the situation of the wound was such, that had he been in a posture of defence, he could not have received it in that place; and from the course the ball took, (which was towards the fore part of the left side of the body,) it is evident, I think, that the deceased could not have been in a posture of defence*.—Do you think that that wound was the cause of his death? Yes, I am certain it was.—Did you find the ball? No, I searched for it, but could not find it. I believe it had fallen into the abdomen, which was so full of blood that there was no possibility of finding the ball, unless we had taken out all the bowels: and it was so late, that the jury, satisfied, on my report, that the wound must have been given with a ball discharged from some fire-arm, and that it was the cause of the deceased's death, did not think it necessary to look any further for the ball†.

Case of JOHN STEVENSON, tried for the Murder of FRANCIS ELCOCK, at Chester. 1759†.

Mr. Cooper sworn. I think you are a surgeon? Yes, Sir.—Where do you live? At *Nantwich*.—Did you know the deceased, *Mr. F. Elcock*? Yes, very well.—Were you sent for at any time, and when, to attend *Mr. E.*, upon account of his having received a wound

* Upon this reply of the medical witness much might have rested—even the condemnation of the prisoner; but in this particular case, the query was *who* committed the crime—not whether it had been committed.

† And thereby deserted their duty. It could only be, thus, *presumed* that a ball was the cause of the lesion, if the verification of the fact depended on the examination of the body.

‡ State Trials.

by the firing of a gun, or otherwise? pray acquaint the court and jury with what you know of this matter? Upon Wednesday, the 21st of March last, a messenger came to me about three in the afternoon, desiring me to go to *Bickerton* to *Mr. F. E.*, who, the messenger told me, was shot. I went accordingly with the man, and got to *Bickerton* about five. When I came there, I found that *Mr. Rowe*, a surgeon from *Malpas*, had been sent for likewise, and had been there for some time before. *Mr. R.* and I went up stairs together to the room where *Mr. E.* was, and we found him ill in bed. * * * *

I then examined the wound where the ball had entered, and found it cut about two inches from the hip, on the left side of his belly: it passed through his belly, by his bowels no doubt, and lodged five or six inches below the right hip, almost through the skin. As soon as I saw this, I took *Mr. R.* into another room, to consult what was fittest to be done; and I told him it was my opinion that *Mr. E.* was a dying man, and that I did not know whether it would be of any use to take the ball away, although it could be so easily effected. But, considering that it would give him some satisfaction, and perhaps ease too, by taking the ball from the place where it did lie, *Mr. R.* and I went into the room again, and I took out the ball. After I had taken out the ball, and dressed the wound, and put a bandage about it. I asked *Mr. E.* how he did? He said he was easier. *Dr. Hayes* came in afterwards, and when I had told him the nature of the wound, he looked upon the case to be extremely dangerous. The Doctor stayed with him two or three hours, and then went away; but *Mr. E.* desired me and *Mrs. Neville* to sit with him, which we did; and his father did so too, till ten minutes past three the next morning, and he then expired. [*Witness produces the ball.*] — Do you believe that the wound *Mr. E.* received was the occasion of his death? I firmly believe that the wound which he received was the occasion of his death*. — Did *Mr. E.* say any thing to you, in his agonies, upon the melancholy occasion, and what? *Mr. E.* told me that he was shot as he was stooping down, with a crow in his hand, striving to open the prisoner's door†. * * * * Pray how came the ball to be made

* Whatever a practitioner may be persuaded of in such matters, he can hardly be at liberty to make so strong an assertion without a *post mortem* examination into, and discovery *thereby* of the cause of death. For, 1st, there is no scarcity of cases where doubt has been thrown upon the alleged cause of death, by discoveries made after death. 2dly, Although it might appear to be splitting hairs to distinguish between what *is fact*, and what a person *believes* to be so, yet the word *belief* in such a form, is neither more nor less than an admission on the part of him who states it, that he is not *quite certain*: 3dly, and more pointedly to the present case, how could an opinion as to the effect of an injury, or the lesion created by an extraneous body, (above all a missile,) be given positively when its course and extent were unknown—except by conjecture? I do not pretend to question the accuracy of the witness's opinion, in this instance, or that death, occurring soon after a person has been shot through the body, will not, in almost every case, be caused thereby; but the possibility of an exception should prompt to the most ample investigation.

† This was a case of arrest, like that of a recent fatal event in Hertfordshire

so flat, in that uncommon form? I believe its going through the door was the occasion of its being in that form.

DOUBTFUL INJURIES FROM VIOLENCE.

Case of WILLY SUTTON, tried for the Murder of ANN BELL. Old Bailey, February 1761.*

HE was indicted for stabbing her in the buttock with a pen-knife.

Thomas Bliss. I am an apothecary; I attended *Miss Bell*. On the 27th of September, I visited her in the morning early, and intended to call in a physician the same day. * * * The next day I met the Doctor there. I asked the nurse why she did not give the clyster? she said she could not, for sores at the part. * * * I opened the sore, or chasm, or wound, call it what you will. Upon opening the buttock, there was an aperture an inch long. I observed to the Doctor that it looked extremely clean, as if cut with a knife: the Doctor remarked the same. About an inch from that, there was a little blind boil, it might be called a tumour, not broke, with matter in it.—Describe the wound. The wound was an inch long, and deepest in the middle; and at each extreme, it went to a point or nothing. It is necessary to observe, that if cut with a knife, it must be cut at twice.

The drift of this witness's evidence was to prove that one cut only existed, and that what he described as a tumour was not a wound.

Q. Upon the whole of your attendance on this young woman, in the condition those sores or cuts were in, did they not contribute to the hastening her death, or were the occasion of it? No more than the issue on the arm would, that I verily believe: had they been seen ten days before, any surgeon would have cured them, they were so insignificant. — Yet being neglected, and in the state they were, when you observed them, did they not contribute to this woman's death? In no ways, in no manner, did they contribute to her death. Her thrush was in a dangerous condition†, and that, together with the high fever and putrefaction, without having any reference to the wounds, were the cause of her death.—Did they gangrene? They did. —If wounds gangrene, does not that, circulating in the blood, occasion a putrid fever? No, Sir; had it been a much worse putrefaction, it might have been cured by surgeons at this day. I have seen mortifications, ten times worse, that have been cured. With her habit of body, a mortification would have happened there, whether she had

* State Trials. This, and the case that follows, have a *general* relation to the judiciary investigation of death by the violence of mechanical injuries, and illustrate several important points of *collateral* inquiry, more than the direct result of particular lesions; on which account I have inserted them out of what might otherwise appear to be their proper place.

† It must be observed that the mouth was aphthous.

wounds or not; that I aver: *she would have mortified just where she did, and when she did, and would have died just at the precise time**. (Very great hissing in court.)

(Cross-examined.) * * * * * You say the wound, when the matter was wiped off, looked clean, like a cut; do you mean it was a cut, or seemed like a cut? It did not carry the appearance of an old wound, as a tumour would; it seemed more like a cut with a knife.—Do you mean to have it understood it was a cut, or like a cut? I do not believe it a cut; I rather think it might be a little bruise, which, by degrees, might increase every day, by lying in the posture she did.—If it was a cut given so long before as the 30th of August, would it not have appeared in a different manner than what you found it on the 2d of October? Certainly, it would have been a foul sore at least in that time.—Could it not be a cut of so long standing as the 30th of August? Both the Doctor and I were clear it could not.—* * *

Whether her bad state of body did not occasion that gangrene? Most certainly her bad habit of body brought on that gangrene, and not the gangrene the bad habit of body; and, as I have given offence to some here, [*when he was hissed*] I hope there are hospital surgeons here that will answer.—Pray give it again. I give it as my opinion, as long as I live, if I die the moment after, that she would have died of a mortification, if she had not had these wounds*.

Dr. Smith†, examined on behalf of the prisoner. I was the physician that attended the deceased. I was called first on the 27th of September. I have been a physician thirty years. I found her under a very dreadful fever. * * * * * She had in her mouth a very terrible thrush, a thick coat like leather, of a pale ash colour; a dry sort of thrush, not at all aiding towards a recovery. It was with great difficulty she spoke at all; and it was my opinion, that unless that could be carried off, she must die mortified. [*Here the witness recounted the discovery of the local ailment.*] I discerned an opening which appeared to me about an inch long; it was clean, and had *fresh digested* matter in it. The lips of the wound (if I must call it a wound) were even; the skin seemed as even, home to the edge, so that it did not appear to me to be a wound given any length of time; for if that had been the case, the lips must have swelled a good deal, and have had an inequality, and perhaps bad scabs.—Do you think it could have been a wound of a fortnight's standing? I do not apprehend it to have been more than five or six days.—Why do you think so? They told me it had been attended with a very bad smell, three or four days the beginning of that week, and it had ceased a day or two before I came. The sight of this opening made me conclude it was an abscess, or an effort of nature to relieve itself by a discharge of that kind. It appears to me to be so, and not of any violence used upon her.—Will you please to speak to the other sore? When I first saw it, it appeared to me like a boil; there was matter in it, but the skin was not broke to let the matter out.—Could that be a wound? Taking Mr. Bliss to be a surgeon, as well as an apothecary, I ordered it to be

* This is the opposite extreme to that of knowing little or nothing — and is as worthy of reprehension as the hypothetical statements alluded to in the text, page 150.

† I presume this was the celebrated Dr. Hugh Smith.

dressed with *linimentum arcaei* *; perhaps I should have done the same thing for a wound inflicted. * * Is it not usual, in these sort of fevers, of the inflammatory putrid kind, for nature to throw out something of this sort that you have been describing in this case? The inflammatory fever which, as the consequence, is putrid after, does throw out symptoms of this kind; the thrush and eruptions.—In your judgment, was the fever the occasion of the eruptions, or these the occasion of the fever? The fever was certainly the occasion of the eruptions.—Do you believe that those eruptions moved at all towards the death of this unfortunate young lady? I cannot think so; I verily think they did produce some service to her; for it was very remarkable, she could the next day speak better, answer better, and, in short, appeared a good deal easier, and had a tolerably easy good night, and spoke better in her voice. I cannot think that these wounds had any influence on her death at all.

(Cross-examined.)—Is not this thrush the common consequence of a gangrene? No, this was long before the gangrene.—Suppose a wound had been given on the 5th of September, do you say it would not have that countenance on the 27th? In my judgment it could not. *

* *
Mr. Crane. What the Doctor has advanced is exactly my opinion, that the sores were rather salutary than destructive to her.

Mr. Percival Pott. I have heard every word distinctly that Dr. Smith has said. I think his account of the deceased is agreeable to what I have seen numberless times.

From the Inquest held at OLDHAM on the body of JOHN LEES, said to have died of Sabre Wounds inflicted at MANCHESTER, August 16th, 1819†.

THESE “proceedings” arose out of others scarcely more tumultuous, as those who may remember the reign of radicalism require not to be told. It was alleged that *Lees* had been wounded on the occasion in question, and that he died of those injuries on the 6th of the following month—as, with some difficulty and no slight exercise of patience, I have been able to gather from the “jabbering and jam,” of this notable inquest. It appears, however, (as far as I can make out any thing like a feasible inference,) that in the mean time the deceased had been following his ordinary pursuits—roving, drinking, mobbing, and behaving himself otherwise, *very unlike a radical*—so that, in all probability, he died of neglected *peripneumonia*, having long had a complaint in his breast.

* An ointment prepared with gum elemi and Strasburg turpentine.

† From the Report taken in short-hand, by J. A. Dowling.

The jury first assembled on the 8th of September, and continued their inquiry till the 13th of October, when the Coroner further adjourned them to the 1st of December; the managers on behalf of the accusation having, at that stage of the proceedings, and after the examination of a "cloud of witnesses," applied for five hundred more summonses, declaring, that as long as there was a man in existence who knew any thing of the transactions of the tumult at Manchester, he should be brought forward—for the purpose of obtaining a verdict of *wilful murder against a whole corps of cavalry!!* To shorten a long story, and get to the end of a most ridiculous, and most indecorous history, the Court of King's Bench, having been applied to for a mandamus to compel the continuation of the inquest, happily discovered a flaw in the proceedings, and, by their refusal, quashed the affair.

Mr. Earnshaw called, and examined by the *Coroner*.—Are you a regular surgeon, and admitted at the college? I am a regular surgeon, but not admitted at the college.—(The coroner offered the book to swear the witness.) I think it improper to take an oath. I belong to the Society of Friends.—*Coroner*. This being a criminal case, I shall not examine you unless you take the oath.—*Mr. Harmer*. Certainly, unless *Mr. Earnshaw* submits to take the oath, he cannot give evidence on this inquest; and, as this is a case of great public importance, and one which it behoves every man who has the least regard for public justice, to give his assistance in elucidating, I trust this gentleman will dispense with the rigid regulation generally adopted by those of his religious persuasion; and certainly, some cases have occurred, within my own knowledge, where Quakers, to aid the purpose of justice, have consented to be sworn; and I will venture, *Mr. Earnshaw*, to say, that no instance ever happened, in which it was of more paramount importance than the present, to deviate from the rule of your persuasion.—*The Coroner*. In such a case as the present, I have known many persons of the same persuasion take the oath.—*Mr. Earnshaw*, (after a considerable pause,) I must decline being sworn.—*The Coroner*. Then, mind, you cannot afterwards be examined. You are aware of that? Yes.

Mr. William Barnett sworn, and examined by the *Coroner*.—Did you see *John Lees*? Yes.—When? The day after his death.—Did you ever see him whilst living? No, Sir.—At whose request did you go to see the body? I was solicited to do so by *Mr. Harmer*.—What was the state of the body when you saw it? It was in a high state of putrefaction.—Did you see any wounds about it? Yes, there was a cut on his right elbow, about two inches long and an inch and half deep.—What was the appearance of this wound? It was livid, and the mark extended to the shoulder. The bone was separated; when I bent the elbow the bone was protruded; the bone was cut partly in two.—Did the place bleed or discharge? I did not perceive that it bled, nor was there any running. If I had examined the wound when he was alive, I have no doubt it would have opened in the same way.—Did the wound appear to be healing? I can't say, because the appearances after death are so different.—On what part of the elbow

was the wound? Just above the joint.—Have you been in the room during the examination of the other witnesses? I have.—Were there any other wounds on the body? There appeared to have been a cut or stab on the left shoulder; the part was black, and appeared to have been nearly healed up.—What was the length of this cut? About two inches long, as I judge by the scar.—Do you think this could have occasioned any serious injury? It did not appear to me that it could.—Was any part of his body discoloured? Yes; his shoulder, back, and loins, were very much discoloured; they appeared to be bruises from external violence.—Was there any other mark or cut, that you saw? There was not.—If you had not heard of any accident before his death, what should you think had produced this discoloration? I should have thought it was produced by violence inflicted by some blunt instrument.—Do you mean to be understood to swear, that the mortification took place in consequence of the bruises and cuts? I have no hesitation in saying that is my opinion.—Could you tell as well, by outward inspection, as if you had opened the body, what was the cause of his death? I could certainly have told better if I had opened it.—If the mortification proceeded from the bruises, must he not have been in excruciating pain for some days previous to his death? Undoubtedly.—And would not gangrene have appeared round the other wounds? I saw none except round the cut; the back and loins were more putrified than any other part of the body.—Did you examine the foot? No; I did not examine the foot.—Could you have traced the same mortification on the day he died as you did afterwards? Perhaps not. In some cases, if it had been very rapid before he died, it might have appeared, and particularly round about the abdomen.—*Coroner* (to the jury). Have any of you any question to ask? *A Juror*. Do you believe he died in consequence of his wounds and bruises? I believe the wounds and bruises caused the mortification. I only speak from general appearances.—*Examination resumed by the Coroner*. Might not those appearances have arisen from some other cause than external injuries? I do not think they could.—*The Coroner* (to *Mr. Harmer*). *Mr. Harmer*, do you wish to put any question to the witness? *Mr. Harmer*. If you please, Sir.

The witness examined by Mr. Harmer.—A witness has said, that one of the wounds bled after the death of the deceased: can you account for that circumstance? I have known it frequently happen, when the fluids were in a state of putrefaction.—Would the loss of eye-sight, and of the use of the limbs, be a necessary consequence of an injury to the spine? They would*.—Are coldness, sickness, loss of appetite, and dejection of spirits, also consequences which usually follow a similar injury? They are.—If the wounds and injuries were inflicted three weeks before the death, must they have been very considerable to have left those appearances which you saw on the body? Yes, they must.—Did the general appearances which the body exhibited lead you to form an opinion of the cause of his death, without further research? Yes.—In the first place, did you believe the appearances were caused by violence and external injuries? Yes.—You have told us you did not open the body? No.—Then I will ask you, whether or not the appearances were quite sufficient to enable you to form a judgment

* The witness, in giving his answer, seems to have borne in mind, merely the latter clause of the question.

of the cause of his death, without opening the body? Yes.—Have the goodness to tell us now, Sir, what you think was the cause of his death? A cutting and maiming.—*Re-examined by the Coroner.*—If his spine had been injured on the 16th, could he have walked about? Yes, he might a little, for a few days after; but, if a very great injury had been done to the spine, he could not have walked.—Did you ever know a person to become convalescent after an injury to the spine? After a slight injury, a person may not at first discover it; but a paralysis of the limbs often follows.—If the spine was injured on the 16th, would he have had more pain at first than a fortnight afterwards? I should think not. * * *

Mr. John Cox sworn.—Coroner. Did you attend the deceased before his death? No, I did not.—When did you view the body, and by whose order? On Thursday afternoon, by order of the constables.—Tell us, Sir, what observations you made? May I refer to notes? Yes, if you took them at the time.—I took them very shortly at first, and wrote them out afterwards.*—Very well, you may refer to them.—*Mr. Harmer (to the Coroner).* I submit, Sir, THAT, UNLESS THEY ARE THE ORIGINAL NOTES, THE WITNESS IS NOT ENTITLED TO REFRESH HIS MEMORY WITH THEM, if those he first took can be produced; but I make no objection to this gentleman making use of the memorandums he now has here.—*Examination resumed by the Coroner.* Were there any wounds in the body? There was a transverse cut across the large bone of the lower arm.—What was the description and size of that cut? I took my box-measure to measure it accurately†. What then was the length of the cut? It was an inch and half long, and was open about an inch at the widest part.—Tell us, Sir, what was its depth? It was about an inch deep; but I can't say exactly how deep it had entered the joint. It had taken the extreme point of the bone away. It was a little oblique, as if it were done by a sword while the man's arm was raised over his head. I took out a small piece of bone, with my thumb and finger, which was partially loose.—What do you suppose was the size of the bone you took out? It was not larger than a sixpence, and like a shell. The wound had not been closed, and there was some grit, or small pieces of bone in the wound. The lips of the wound had no marks of inflammation, to any degree, or mortification.—If you had seen it while he was living, what should you suppose would have been the state of it? I cannot tell exactly, as the wound was clear from pus or blood when I saw it; and I suppose it had been washed clean.—Do you think the man had been properly treated? I do not know; there were some pieces of bone left in the wound‡.—What

* Vide *suprà*, pp. 23, 141, 188.

† I was not, at the time, aware of a precedent for the rule I ventured to lay down at p. 131; and it is enlivening to suppose, that I may not be the only member of the profession who has derived a practical lesson in forensic medicine from the labours of *Joseph Miller*.

‡ This is a very strong insinuation. A jury would naturally infer, that the circumstance of these pieces of bone remaining in the wound was ascribable to *mala praxis*. The deceased died about three weeks after the receipt of the alleged injury. Suppose that it *was* a sabre wound, extending to the bone, is it not fully consistent with the nature of such wounds, that bony fragments shall, in spite of the *best treatment*, remain for a much longer period?

other marks of external violence did you discover? On the left loin there was a bruised space as large as my hand; this was over the short ribs, and, *from the feel of it, I considered the part had been inflamed*, and that there had been some EXUDATION; that is, *some air infused into the cellular membrane**. There was neither putrefaction nor mortification, but an approach to putrefaction after his death.—Were there marks of any other bruises? There was one on the right side of the back, but not so violent; the discoloration was as large as my extended hand; it was something similar to the other, but not so violent. There were two marks over the hips; the cuticle was cut, and the marks were in a state of ulceration; there was a blackness, and a purple colour on them, and they appeared to have been produced by violence. From the two bruises on the loins to the back of the neck, there were no bruises of any consequence; indeed, I think I may say none.—Did you observe any wound on his shoulder? I examined both his shoulders, and there was no breaking of the skin, or any wound, that I could discover. The clothes, I was told, were cut over the shoulder; but if it was done by a sword, it must have been with the flat side, because the skin was not penetrated †.—Were any other parts of the body discoloured? The neck and throat were inflamed and livid.—What do you suppose was the cause of this discoloration in the throat? I should suppose from external violence.—Have you ever seen the same discoloration in the throat of a person where there had been no violence? I don't recollect.—Was the discoloration deeper than in cases of death where no violence had been committed? Yes, it was.—How far did it extend? All round the neck.—From what kind of violence, think you, did it proceed—a blow, or what? Strangulation might have done that in front of the neck, but not at the back. *If violence was the cause, it must have been occasioned by more than one blow* ‡.—How do you think the injury was produced? I can form no opinion how it was done. It was *tumoured*, but the skin was not broken.—Would not the appearances of violence and blackness have been perceivable when he was alive? Certainly; the throat would have been tumefied and red during life.—Were there any other marks that you observed? Did you see any thing the matter with his legs? No; I did not examine his legs. The people were waiting to bury him, and as his stockings were on, I did not think it necessary for them to be taken off §.—Can you account for the deceased losing the use of his limbs? The paralysis might have been occasioned by the injury on the neck. I put my hand very carefully all over the head, and saw no injury done to it; and there

* In the present instance I am quoting from an authentic report *at large*, not from blundering abridgments in the newspapers, and have every right to rely on its correctness. Here, however, I am almost tempted to blame the reporter; for the term “exudation” could not have been used to designate an “effusion” of air into the cellular membrane, by a medical man.

† This nonsense, about the flat of a sword cutting a coat, seems to have passed as evidence!

‡ Quod est — “Strangulation might have done it; but, if it was done by violence, it must have been done by blows.” Qy. Is not strangulation violence?

§ A bad reason is sometimes, better than none.

was no external injury on the breast.—Was any injury on the spine, as you saw? I could discover no appearance of any, and I should think there was no injury done to it.—Were any of the ribs broken? No.—Was any injury done to the abdomen? None.—You opened the body? I did, and observed the omentum. * * * * *

The omentum is that part which covers the intestines, which is generally called the caul. This was in a high state of inflammation; that part lying near the bruise was most inflamed. The small bowels were also inflamed. On moving the body, much blood gushed from the mouth and nostrils. On opening the larynx, or windpipe, it was full of blood. The right lobe of the lungs was full of blood. The right cavity of the thorax contained much blood, *which might have been occasioned by accident, as I was using the knife, when raising the breast* *. I could not see how else it could have come there. The mediastine was slightly inflamed, and the right inner membrane of the pericardium was inflamed also.—Would these inflammations have arisen naturally, after death? I cannot say that. The heart appeared sound and healthy. There was no organic effusion appeared, of a nature sufficient to be fatal, except in the right lobe of the lungs†.—What, in your judgment, was the cause of his death? It is my opinion, without the least doubt, that he could not have died of the wound on the elbow. I am also of opinion, that if he lived till the twenty-second day after the injury, (which he did,) that if he had received proper surgical and medical assistance—I mean no reflection on any one—but if copious quantities of blood had been taken from him, as I should have done, the injury might have been checked.—Were there any appearances of his being properly bled? No, there were not.—If copious bleeding had been resorted to, do you think he would have recovered? It is very probable he might.—Had he been bled at all, that you saw? There were no appearances of his having been bled in the arms or neck, which are the usual places for bleeding.—Do you think the appearances on the back were sufficient to cause death? I think the bruise on the loins communicated the inflammation to the omentum; and thus the inflammation proceeded through the bowels, which might have been checked by bleeding.—Could you discover this from external observation? No, I did not discover it until I opened the body.—From general appearances, external and internal, what do you consider was the cause of his death? According to my opinion, the immediate cause was the suffusion of blood into the lungs, which I do not think was caused by the bruise on the thorax.—How do you account for it then? I could not account for it.—Was there any external violence on the lungs? There was not.—Was his death occasioned by mortification? It was not; I saw no mortification.—If the injuries were not so severe as to cause death in less than twenty-two days, was there not time for medical aid to have checked these effects? There was.—Can you positively say that his death was occasioned by external violence? I cannot distinctly say it was.—Can you undertake to say that the internal state of the body was occasioned by external violence? I cannot decidedly

* This confession was sufficient ground to have rejected all his evidence.

† And what evidence have we that this awkward necrotomist did not cut into that also, when *misusing* the knife?

say it was occasioned, although external violence might have increased it. — To what cause can you attribute the blood in the lungs? If he had had a disposition to inflammation in his breast, the inflammation occasioned by the external bruises might have increased it, so as to cause the rupture of a blood-vessel, and thus occasion the suffusion of blood that appeared in the lungs. — Could you form any idea of what means or weapons the bruises on the back were produced by? No, I could not. — Could you perceive, by the lungs, whether he had had any cough? No, I could not. — Can you account for the internal appearances? I cannot; but I think the external marks would not have appeared from the internal inflammation. — Is it possible that the internal appearances might have existed without external violence? It is possible they might; but that is only conjecture. The inflammation might have existed without violence, but I think the appearances of the abdomen was produced by external violence. I think the injury done to the thorax might have occasioned paralysis, especially as the tumour in the neck was inflamed; but if I had attended the deceased during his illness, I could have explained many circumstances more satisfactorily than I can now. — What do you think caused the appearances in the breast? The rupture of a blood-vessel. — If his death was occasioned by external violence, at what time should you think that violence had been inflicted? I think, if it were occasioned by external violence, that it was done rather on the 16th of August than earlier. — Do you know what medicines he had taken? No, I do not; the smell of palm oil, which is used with marshmallows, was very predominant, and indeed, more so than that of putrefaction. — Can you tell what caused the pains in his legs and about his shoulders? I should think they proceeded from the internal state of the body. — *Coroner*. Would the jury wish to ask any questions of the witness? *A Juror* (to the witness). Do you think all danger might have been removed by bleeding? I saw nothing the matter with him, but what might have been remedied by bleeding. — *Juror*. Do you consider his death to have been occasioned by neglecting copious bleeding? I think if he had been copiously bled, he might have recovered. — *Juror*. Was the disorder which caused his death occasioned by external bruises? I think the bruise occasioned an inflammation, which extended slightly to the bowels. — *Juror*. What do you suppose to be the immediate cause of his death? The most skilful anatomists are often at a loss to find the real cause of death. I think the immediate cause was the suffusion of blood on the lungs; but I am confident it did not proceed from the wound on the elbow. — (*The witness examined by Mr. Harmer.*) When did you first see the body of the deceased? On Thursday afternoon. — That, I believe, was after the jury had seen it? Yes, I believe it was. — Did you not learn that *Mr. Earnshaw*, the surgeon, had attended the deceased during his illness? Yes, I did. — Is it not the usual courtesy with gentlemen of your profession, when called in, as you were, to require the presence and assistance of the gentleman who has attended the patient? It may be. — Is it not the constant course? I believe it may be. — What may be, is no answer to my question. Do you not know it to be uniformly the practice? It is. — Then I ask you, Sir, did you send for *Mr. Earnshaw*? No, I did not. — Was it not material, to enable you to form a correct judgment, that you should learn from *Mr. Earnshaw* the symptoms of his patient, and the treatment he had adopted? Yes; and if *Mr. Earnshaw* had been a regular practitioner, I should have desired his attendance; but, as he was

not, I sent to another professional gentleman in this town, to accompany me to open the body; but he was from home*.—Do I understand you to say, that you are of opinion that the external bruises were the cause of his death? It may be, he may not have died but for them.—Do you mean to say there were not sufficient external appearances to account for the state of the lungs? I do.—Can you undertake to swear that the rupture was not occasioned by external violence? No, I cannot.—Have you ever seen a body in such a state internally, without external violence? I think I have.—Do you mean to say, that you ever saw a body in a state precisely similar? No, I cannot say I ever did†.—Might not the external injuries be the primary cause which led to the inflammation internally, and thus bring on the rupture of the blood-vessel? I cannot say that.—Can you undertake to say that the external injuries were not the primary and ultimate cause of his death? No, I cannot; I do not know why he died.—Then, Sir, I will ask you no more questions.—(*Witness re-examined by the Coroner.*) If the state of the lungs had been occasioned by bruises on the 16th of August, could he have gone to Middleton? No, he could not.—If his injuries had been so serious as to lead to his death, would he not have been likely to complain? Yes; but I understood he was afraid of complaining to his father, on account of the circumstances under which he received the injury.—How do you know that? By the conversation of the people in the neighbourhood, who knew the family‡.—Had he any other complaint? I saw no appearance of any other about him.—If the lungs had been injured before the 16th, would he not have had a difficulty of breathing? He would, and perhaps a cough.

* James Clegg (an acquaintance of the deceased,) examined.

(Cross-examined.) Were you present when Mr. Cox opened the body? Yes, I was.—Did you hear Mr. Cox say what occasioned his death? He said that the bruises, and not the cut, had caused his death.—Mr. Cox here requested permission to put some questions to the witness, which the coroner granted.—Mr. Cox (to the witness). Did I not say that the appearances in the lungs accounted for his death? Yes, you did.—Did I not say that the deceased did

* No fault can be found with Mr. Cox's conduct in this respect. If Earnshaw was not an accredited member of the profession, those who were so had a right to keep aloof from him. I would not have the relief of a suffering patient impeded by a supercilious observance of etiquette; but even a case of this kind can but rarely happen, and in an affair of *cadaverous practice*, which may lead to a forensic job, of such a nature as the above, I can hardly censure my brethren for being scrupulous in their choice of company, notwithstanding the importance I attach to professional conferences.

† It is a pity that the witness did not feel himself warranted to turn round upon this amateur examiner, and say something to this effect:—"If I have not seen such cases, others have, and I believe their reports, and have formed an opinion upon their authority—and my opinion I have stated." Had he then gone on to ask who the authors of those opinions were, perhaps he might safely have replied, "my teachers."

‡ Is not this hearsay?

not die of the cut in his arm, but of the injuries on his body? Yes,
you said he died from the bruises on the body.

William Simmons sworn. — (By the *Coroner*.) What do you know, Sir, about the death of *John Lees*? All I know about it is what I heard from *Mrs. Lees*.—*Coroner*. You did not know *John Lees* at all? No.—Nor how he became wounded? No*.

Mr. Simmons examined by *Mr. Ashworth*. Now, Sir, after having heard the evidence of *Mr. Barnett* and *Mr. Cox*, and their description of the appearances of the body, both externally and internally, what was, in your opinion, the cause of the death of *John Lees*? I have no hesitation in declaring, that any injury which *John Lees* might have received on the 16th of August, did not, and could not prove the cause of his death.—What, will you tell us, are the grounds of your opinion? I judge from the history of the case. Every professional man knows, (I mean in our profession,) or ought to know, that the danger follows closely upon the violence inflicted, and that nature immediately assists the process of the system to repair any injuries that may be sustained. Now, the next point to which I shall advert is connected in order with this; and I shall afterwards explain any particular point which I may be called upon to explain. The injury was that of a cut on the *olierum*†, or shoulder bone. — That is not apprehended to be a dangerous wound? It ranks not as a dangerous wound.—There are many instances of that bone being taken out by surgical operation, and the only danger that would follow the infliction of such an operation or accident, that is, where it is only a simple cut — for a contused wound makes a broad distinction—the only danger, I say, that can follow, is inflammation in the first stage, which will follow closely upon the operation. Now, according to what I have heard delivered, the inflammation had subsided in this case, as it must necessarily do, or go on rapidly to a fatal termination, in a short time. That is the active stage of the complaint. I think it necessary to explain, in this stage, that, when a joint is opened, when the patient recovers from the first inflammation, or active stage, it must be generally in chronic disorders, and similar to what we see in what are called white swellings of the joints. Now, in this instance, the first inflammation had subsided, whatever inflammation there might have been after the accident.—*Mr. Harmer*. Now, *Mr. Coroner*, is this what the witness can know? It is still the hearsay of others, and, though it is down upon your notes, the witness is not speaking it as from his own knowledge. He is forming an opinion merely upon what he has been told somebody else said.—*The Coroner*. He is forming an opinion upon what has been stated on oath in this room.—*Mr. Harmer*. Still, Sir, I submit that it is not evidence; as to him, it is still nothing more than hearsay.—*Mr. Ashworth*. With respect to hearsay evidence, Sir, it is evidence with respect to the science of others, and in that shape hearsay evidence is admissible.—*Mr. Harmer*. But, Sir, the other witnesses spoke from ocular observation; they had the evidence of their senses to assist their judgment.

* A long and angry discussion, upon a point of form, here interrupted the course of the examination of this witness.

† Query, if a guess for *humeral*?

—*The Coroner*. I am of opinion this is evidence. I had resolved to have such evidence brought forward in consequence of a juryman expressing a wish to know whether this mode of treatment, or that mode of treatment, was proper. * * * * *

For my own satisfaction, it was my opinion that I ought to have the judgment of superior men upon the subject *.—*Mr. Harmer*. Well, Sir, I shall call evidence to the same effect.—*The Coroner*. Very well.—*Mr. Harmer*. If we are to have evidence of this description, I shall send to London for the first men of the faculty, and I shall beg the inquest be adjourned for that purpose.—*The Coroner*. I think this is the last open court we shall have here of the kind, if we are to be threatened in this sort of manner, with such an immense number of witnesses. (To the witness.)—You say the inflammation in this case had subsided? Yes.—*Mr. Harmer* (to the witness). How do you know the inflammation had subsided? From *Mr. Cox*.—*The Coroner*. Well, Sir, go on? I am of opinion, that in this case the first inflammation had subsided. Now, Sir, in going on with the argument with regard to the state of the wound, the first inflammation having subsided, no irritation that could at all endanger life, (if any existed afterwards,) did subsist — all immediate source of danger, my conclusion is, had subsided. My reason for using the term “immediate” is, that in consequence of the exposure of the joint, a chronic inflammation in the joint must have taken place.—*The Coroner*. What do you mean by “exposure of the joint?” I mean the joint laid open. My conviction therefore is, that the cut on the elbow joint did not, and could not, be the cause of his death, at such a distance of time after the accident took place. There is something mentioned with regard to paralysis and injuries to the spine and neck. I do not know whether I may be permitted to render myself intelligible upon that stage of the case, by some physiological and pathological observations. If it would be permitted, Mr. Chairman, I will cheerfully do so.—*The Coroner*. If you please.—The witness proceeded. It is stated, with regard to the back, that there were bruises inflicted upon it and on different parts of the body. Now, whatever injuries might be inflicted, it does not appear, from the history of the case, that the spinal cord was injured, which alone would have produced paralysis. There were not, as it seems, bruises of the bone. Now, had the spinal cord been injured, a man could not have walked; but there are no symptoms indicative of the spinal cord having been at all injured by the bruises. I shall next proceed to the appearance of the bruises described to have taken place. Now, to a medical mind, it is easy to describe what is the effect of a bruise; but to those who are not in the habit of seeing such things examined, it is necessary to state, that when a bruise is created by a blunt blow being inflicted, a number of vessels, more or less, are ruptured. A quantity of blood is poured out into the cellular membrane, immediately after this the discoloration of the skin is black, or of a very dark colour; but in a few days, or a week, more or less, (though the appearances may continue for more than that,) a gradual change is evinced. Absorption takes place very frequently, unless the blood has issued from the ruptured vessels in large quantities, and nature sets her preparer of lymph to act as a purifier, to prevent a dif-

* This is a close illustration of the doctrines laid down in the text, upon the merits of experience as the ground of scientific evidence.

fusion; and this is called "adhesion." Now, suppose the worst to have happened, these appearances having been formed by nature, the worst that could have happened would have been suppuration. Where absorption has failed, suppuration would take place. I need hardly mention what is meant by suppuration; it means a gathering. Now, as this had not taken place speedily, I am compelled to infer that danger, if ever such danger existed, was perfectly expelled, because the suppuration was external to the large cavities of the body. I now, therefore, for the present at least, take leave of the external parts, and proceed into the larger cavities. Now, beginning with the abdomen or belly, the account of *Mr. Cox*, who inspected the body, is, that there was an inflammation in the omentum; and, if I recollect rightly, of some of the smaller guts. Now, Sir, I must lay down a broad distinction with regard to the wound on the elbow, between acute inflammation and chronic disease. Now, the appearances described by *Mr. Cox* indicate acute inflammation: now, as acute inflammation is one of the most violent diseases that can afflict the human frame, it is utterly impossible that a man could have carried it about him from the 16th of August to the time of his death; it is utterly impossible, I say. Now, I ascend to the chest; and there the appearances described are, of an accumulation of blood in the right lobe of the lungs; and there was also an extravasation of it into the right cavity of the chest. It does not appear that there were any marks of external violence upon the chest. Now, if this extravasation of blood into the right cavity of the chest, or the accumulation of blood in the right lobe of the lungs, had been caused by any injury inflicted on the 16th of August, the man must have died much earlier than he did, and there must have been external marks of violence on his chest. It must have happened in his case, as it has happened in all other cases of injuries, where the vessels of the lungs have been punctured by fractured ribs, that he would either have been suffocated by the accumulation of blood preventing respiration, or by the inflammation following upon the injury by the extravasation, or he would have died from both causes, in conjunction. It appears also, that the external inflammation had extended to the pericardium, or the bag in which the heart is lodged. Now, Sir, I must go to the lymph. In chronic inflammation the lymph would be brought out on the surface of the frame or outer membrane. Now, *Mr. Cox* distinctly states, that there were appearances of inflammation, of course the disease was acute; and hence, again, I am compelled to infer, that death could not be owing to any violence received a fortnight or three weeks before. I believe these three heads exhaust this part of the subject. I will now explain, as far as I can, what was not the cause of his death; namely, that from the active inflammation which was stated to exist in the abdomen and in the pericardium, and from the extravasation of blood in the cavity of the chest, I think that he died of an acute disease, and not of the injuries received on the 16th of August. I am not aware, *Mr. Chairman*, whether, in forming a medical opinion as to what was not the cause of his death, I should advance to describe certain appearances which have not been fully described. — *Mr. Ashworth*. I understand you perfectly, Sir. (To the *Coroner*.) This gentleman, Sir, in fact, says, that what occurred on the 16th of August could not be the cause of the death of the deceased. He now wishes, from the evidence of *Mr. Cox*, to give some further explanation, in fact, as to the appearances that were exhibited, and how they were connected

with the cause of death.—*Witness.* Certainly, that is what I wish to do.

Mr. Ashworth. Have you ever seen me, Sir, upon this subject before? No, Sir, and I would wish to satisfy any gentleman, that I am not influenced by any man, and that any consideration, unless that of a public duty in this case, is below my notice. I have not seen *Mr. Ashworth* nor *Mr. Barrow*, excepting in meeting them in the street; but no conversation has passed between us on this subject.—*Mr. Ashworth.* And in order to stifle all suspicions, I declare I have not said one word to *Mr. Simmons* on this subject; nor have I uttered one syllable to him about the matter before he came into this room.—*The Witness.* It is impossible; for I never heard a word about my attending here until Wednesday, nor did I hear any insinuation that I was to attend here in any shape; and no man shall ill-use me, by insinuating that which is contrary to the whole tenour of my character. No consideration should ever influence me to give evidence contrary to my conscience, on any occasion, to serve any man or set of men on earth. Now, Mr. Chairman, I will ascend to the neck, and I beg to say, that it would be impossible for any human being, afflicted with a disease of the brain, to go about; and with regard to the accumulation of blood in the right lobe of the lungs, and the extravasation of blood into the right cavity of the chest, it is impossible not to infer that there was great difficulty in breathing. Any man who has seen a paroxysm of asthma, will see that it is owing to the want of a free circulation of blood through the lungs. Now the blood is sent up to the brain by the arteries. That being sent up in the course of circulation to the brain, and having been prevented from returning from the head through the lungs, an accumulation of blood must have taken place about the head and neck; and hence I should explain the swollen appearance of the features and of the neck, and the discoloration of the features and the neck, for a reason which I shall presently mention. Now the accumulation of blood in the head and neck, would press upon the brain more or less; and upon the optic nerve, *which would blind one eye.* Now this accumulation of blood in the vascular system at the time of death, it is necessary I should explain: at least to render myself intelligible, that this accumulation of blood in the vascular system, which existed during life, would, after death, transude through the coats of the vessels; and hence occasion a dark morbid appearance, which is observed more or less after death in every instance. Now, during life the blood-vessels do not permit the blood to pass through them.—*Mr. Ashworth.* That is, through their coats? Yes, I mean through their coats. As soon as the living principle is extinct, the blood does transude, to a considerable extent, through the coats of the vessels, *just as if it were soaking through a piece of cloth.* That explains the principle upon which it takes place, and the difference between a living state and a dead state.—*The Coroner.* That is the difference between the outward appearance of a body? Yes.—*Mr. Ashworth.* That, then, Sir, causes the difference between the appearance of a human body alive or dead? Yes, it is the vital principle that forms the organisation, and not the organisation that forms the vital principle; because the body becomes disorganised the moment the vital principle is extinct. Disorganisation commences immediately upon the extinction of the vital principle. The period for the disorganisation of the body having commenced with the extinction of life, putrefaction next takes place. A new composition, and a new arrangement, in fact, ensues, and this much more rapidly

when the body dies in a state approaching to high health, than it does after a lingering disease, and more especially in a hot season of the year, where gas is extricated; and hence may be explained the emphysematous appearance about the neck and back, and it is very common for air to escape in opening the body. Now, that this could not have happened with any communication is most clear; and hence it must have proceeded from the putrefactive process. Nor was there any communication with the cavity of the lungs. I believe this, Sir, exhausts the subject, according to the view which I had taken of it; and here, probably, my examination might terminate; but if it be the wish of any gentleman that I should explain my own view of the cause of the death, I have not the least objection to do it. I think I have demonstrated according to the laws of the living. — *Mr. Harmer*. I beg, Sir, you will not be talking about demonstration. What you have demonstrated, or not demonstrated, is a question for the jury, and we shall have their opinion upon the subject in due time. *The Witness*. I speak professionally. — *Mr. Harmer*. And professionally, Sir, I object to it. — *Mr. Ashworth*. I beg the witness may not be interrupted. — *Mr. Harmer*. I beg the witness will not use the term demonstration, as applicable to his own evidence, and then I shall not interrupt him. Here he is talking about having given demonstration, and then he is proceeding to reason upon what he says he has demonstrated. Why, Sir, what are the facts that are demonstrated, cannot be known till the termination of our present investigation, and this gentleman must not assume to himself that which is the province of the jury alone*. — *Coroner*. I think he may give evidence of his opinion as to what was the cause of his death, from the evidence that he hears was given as the cause of the death. — *Mr. Ashworth* (to the witness). Come, Sir, go on, if you please; we will not be interrupted in this kind of way. — I think I have shewn then, to demonstration, if that is a word that may be uttered, and I think there cannot be any harm in it, that according to the laws of the living system, and I trust I really have demonstrated it, the injury received by the deceased on the 16th of August could not have caused his death. — *The Coroner*. What is your opinion of the cause of his death? Now, Sir, as he died, I should conclude from the circumstances stated, of an acute disease, it must be of an acute disease of the bowels or lungs; it must have been brought on, as in other cases, by recent injuries, by intemperance, by the application of cold, which is another cause of internal inflammation, and which, like other acute diseases of a similar character, might have terminated his existence. Upon the whole, then, what I believe is, that, in my opinion, if he had received ten times more than that which he afterwards recovered from, there would not have been any dangerous consequences from any injury he received on the 16th of August. I don't say he had perfectly recovered, but he had recovered from all dangerous consequences, and he died of an acute disease, brought on in the manner I have described, or by some other means, and I am most confident of it. — *Mr. Ashworth*. Which means are the common causes of such diseases? Yes. — *Coroner*. That is your opinion, from what you have heard? Yes.

* In this *Mr. Harmer* betrays, at least, total ignorance of the word in question, as used in surgical anatomy, and as employed by the witness. No jury can judge of such facts, but from the demonstration, or shewing, of professional men.

The examination of the witness resumed by *Mr. Ashworth*. That is your opinion, from the evidence of *Mr. Basnett*, who saw the body without its being opened, and from the evidence of *Mr. Cox*, who saw it after it was opened? Yes. — That is your opinion, from the evidence of these two gentlemen? Yes, certainly. — And not from what you have heard in any other way? Certainly not. I knew nothing about it. I only heard that an inquest was going forward, and I read an editorial argument, but I could not know any thing about it. — But you form your judgment from nothing but the account that you have heard read? I read an account in the *Courier*. — But is your judgment formed from the account given by *Mr. Basnett* and *Mr. Cox*, and nothing else? Certainly, before I read the account in the *Courier* on Thursday, I knew nothing. — What I mean is this: is your judgment given from the evidence you have heard read from the *Coroner's* notes? Yes; and I only explain, that I had read the *Courier* on Thursday morning. My evidence was founded on the evidence of *Mr. Cox* and *Mr. Basnett*, which I went through, as far as my recollection served me, *seriatim*. — How long, Sir, have you been in practice? I have held my appointment, at our Infirmary, twenty-nine years; and I had been in practice some time in the town before that. — But you have held your present appointment of surgeon to the Infirmary twenty-nine years? Yes. — I need not ask you, if, during that time, you have seen a great variety of cases? You need hardly ask it; I have seen between fourteen and fifteen thousand patients, all, with very few exceptions, constantly on the spot. — And, of course, you have seen a great variety of cases? All sorts of cases. — And constantly on the spot? Yes, for twenty-two years I never had an excursion for more than a single day, and that was fifteen years ago; and, in fact, I went on until I could go on no further. A friend reminds me, that at the expiration of twenty-two years I was obliged to go to *Scarborough*. I wish to guard against a quibble.

(The witness examined by the *Coroner*.) I would wish to ask, whether the inflammation in the lower bowels, and the omentum, which you have had described to you, could have existed from the 16th of August to the time of the death of the deceased? Certainly not. I most particularly explained that. That is the view which I take of it. — If that inflammation had been produced by external bruises, when would it take place? It would follow rapidly. — Suppose the bruises had been inflicted on the 16th of August, and had been the cause of that inflammation taking place, what time would elapse before it would take place? Not above two or three days. — Then if the cause had been inflicted on the 16th of August, how soon would the inflammation begin? It would begin its process very quickly. It commences almost immediately; within two or three days at farthest. — Then, from the description you have had of the inflammation in the deceased, how long are you of opinion that it had existed, previous to his death? Not many days. Now, Sir, it must either prove fatal then, as it did, or the patient must have been saved, by adhesion forming with the lymph, which I before described.

(The examination of the witness resumed by *Mr. Ashworth*.) Then, Sir, are you, in fact, of opinion or not, that the cut on the elbow, and the different bruises mentioned in the evidence of *Mr. Basnett* and *Mr. Cox*, occasioned the death of the deceased? I have before stated, and I will confirm it, that his death was not owing to any injury received on the 16th of August. What I mean by adhesion after inflam-

mation terminates, may be understood by an illustration, as in *pleurisy*. The way in which *pleurisy* frequently terminates, is by the formation of adhesion to the inside of the chest, and that terminates the inflammation. In this instance, the man died from this adhesion, in all probability, not having formed. Either the disease would run its course to destroy life, or the adhesion that would form in case of *pleurisy*, would put a stop to the progress of the disease. — How long do you think it possible for this inflammation of the omentum and the lesser guts to have existed, before it occasioned death? How long is it possible that they should have existed before they terminated fatally? Not many days. Inflammation in the bowels, as every one knows, is soon stopped, or soon terminates existence. Every one must have heard of that. It will sometimes destroy life in twenty-four hours, or a shorter time. It depends, of course, upon the degree of inflammation, which is various in different instances. — Then, I understand you to say, that if the inflammation of the omentum and the lesser guts had arisen from bruises inflicted upon the deceased on the 16th of August, his death must have ensued in a week from that time? That depends upon the inflammation. It is impossible to fix it positively, unless one knows the state of the inflammation. — But, supposing the inflammation to be that which has been described, must existence have terminated in a week? Yes, in a shorter time. — I think you said also, that the inflammation itself, if produced by those bruises, must have come on in two or three days? Yes. — And that inflammation would have terminated existence within a week from that time? Yes, unless adhesion had formed, to stop the spreading of the disease. — Which, from the history of this case, you learn had not taken place? No. It does not appear so from the examination of *Mr. Basnett* and *Mr. Cox*. Their remarks shew, in my opinion, that it was an acute disease.

(The examination of the witness resumed by the *Coroner*.) If I understand you right, Sir, then this inflammation would not have suffered the deceased to have gone about so much as we hear he did after the 16th of August, if the inflammation had arisen, as you say it must have done, within two or three days after the injuries that produced it, and if those injuries that produced it, were inflicted on the 16th of August? No. No man ever heard of a man going about with an acute inflammation of the little guts. — It is utterly impossible? is it physically impossible? Yes, it is. — You said, that the effects of the injuries received on the 16th of August, were surmounted and got over; and you gave a reason for it? Yes. — Now, will you explain that? The consequences of an injury which produces this inflammation are, either to go on to destruction, or, for the inflammation to terminate and subside. Having subsided, the source of danger is done away with; and, therefore, it could not happen in this case, because the man was healing, which would not be the case if danger was not over. Whatever injury he might have received on the ground on the 16th of August, all source of danger had terminated from that cause before his death, and he could not die of that. The cause of his death was of recent origin. — It has been stated in the evidence of another person, that there was an appearance of specks, and an appearance of a bluish colour; can you account for that? That is one point that I am afraid I have been too tedious upon, but which I will endeavour to explain. But I will explain the difference in appearance between a recent extravasation, and an extravasation of some continuance. Soon

after the injury is inflicted, the part looks black; but, as nature is endeavouring to restore the injured part, an absorption takes place of part of the extravasated blood, and, instead of the part being black, it assumes a variegated appearance, and becomes black and blue, and lilac and yellow, according to the state of the absorption; but any spot at that time must still be explained upon the principles I before stated, that is, the transudation of the blood through the coats of the vessels. — Do you think that was produced by paralysis? He could have no paralysis, when he was enabled to walk about; and, from the statement I have heard, he certainly had received no injury of the spinal cord, because, if he had, he could not walk about. — How are you of opinion that these appearances, these spots could have taken place? That proceeded from extravasation after death, I have no doubt. — There is another point which we wish to be ascertained; were these spots owing to paralysis? No, it was not owing to paralysis, it might be similar to apoplexy; but this had nothing to do with any injury that the man might have received, had it been ten times greater than it was, on the 16th of August. — To the best of my recollection, this loss of the use of one side, and of the sight of one eye, took place on Thursday, and *John Lees* died on the Monday night: could any injury received on the 16th of August, produce any such effect as that, at the time before he died? Certainly not; as far as the evidence goes, he had received no injury on the head. A concussion of the brain is a most alarming disease, and shews itself instantly. — It is also in evidence, Sir, that the deceased, after he was in bed some time, towards the latter end of his life, complained of a pain towards his shoulders when he was removed. That was when he was confined to his bed, for three or four days before his death. Can you account for that pain? The symptoms stated are, that he had lost the use of his left side, and the sight of his left eye. Paralysis on the left side would blind the left eye. There must have been also evidently a congestion of the blood on the brain, and, in case of an injury to the head, trepanning is frequently resorted to; and when you remove a body which is lying like a dead weight, I have known it frequently happen to be so. — What, from the attempt to remove a person from the posture in which he lies? Yes, when a person has been constantly lying in a particular posture, when he is attempted to be removed he will feel this pain. — And that is not confined to any particular part? The pain is generally where the flesh is contused. — This was after he had lost the use of one side, and he came very soon afterwards to be so as not to be understood; but the evidence is, when they put an arm under his shoulders to get him up, he always complained? Evidently at this time he was lying under an *apoplexy*, and this *apoplexy* could not be caused by any injuries received on the 16th of August. — (*The Foreman of the Jury* was here about to put a question direct to the witness.) — *The Coroner* (to the *Foreman*). The regular way, Sir, is, to put your questions to the witness through me. *Foreman of the Jury*. Very well, Sir. I think the witness says, that the deceased did not die in consequence of the injuries he received at Manchester on the 16th of August? *The Coroner*. You have heard that question, Sir, will you be good enough to answer it? No, certainly, he did not. — *The Foreman*. The witness has also said, Sir, that if the deceased had received ten times as much injury on the 16th of August, as he did, that these effects would not have ensued. Does he know what injuries the deceased really did receive on the 16th of August? Co-

roner (to the *Foreman of the Jury*.) He has said, that he would have gone on day by day, either getting better, which he did, or getting worse; and, if this inflammation had been produced on the 16th of August, he would have died in little more than a week afterwards.—*Foreman*. I ask, Sir, does the witness know what injuries the deceased received on the 16th of August at *Manchester*? *Witness*. I take my reasoning from the document which the *Coroner* has read to me. He has read over to me the evidence of *Mr. Basnett* and *Mr. Cox*, and that is the ground of my reasoning. — *The Foreman* (to the witness). But the deceased was beaten with bludgeons and with staves. You know you have not heard of that, though it has been proved here upon oath? If he had been bruised ten times as much as he was, still I say he had recovered from the effects of those bruises. — *The Foreman*. But, might not those bruises have brought on something of which you suppose he died? Certainly not. — *Another Juror*. I should like to ask the learned doctor, if wounds and bruises may not be inflicted on a man, of such a nature as to produce appearances such as this exhibited three weeks afterwards? The injuries and bruises this man received at the time must have been external, and were not affecting any of the larger cavities. — *The same Juror*. Do you mean to say, that external bruises and injuries in a man, may not, and do not, frequently lead to his death three weeks afterwards? If none of the larger cavities—by the bye, though, that does not apply to the injuries in this case, according to the evidence now before me. — *The same Juror*. I should like to hear what answer you give to that question? If none of the larger cavities were affected, so as to injure the viscera, I answer positively in the negative. — *Juror*. But you will allow, that in some cases it may happen? I answer positively in the negative.—*Juror*. If the larger cavities are not injured, you mean? Yes.—*Juror*. You are certain that the larger cavities were not injured in this case? Most clearly not. — From what you got from the *Courier* newspaper? No. The first information I received, was from the *Courier*; but I have stated my evidence here from hearing the evidence of *Mr. Basnett* and *Mr. Cox* read: I first received information of what had been given in evidence from the *Courier*.

(The witness examined by *Mr. Ashworth*.) But, Sir, is your present opinion as to what was the cause of the death of the deceased, given upon the evidence of *Mr. Basnett* and *Mr. Cox* read here only? Yes, exclusively. — And does it appear from their evidence that the larger cavities were not injured? Certainly.

(The witness re-examined by *Mr. Harmer*.) I think, Sir, you say, that your opinion is formed entirely and solely from the evidence you have heard read here this day? Certainly. — And, I think, you also said, that you had not any communication with any one, or information upon the subject, except from the *Courier* newspaper, until you came here? I have mentioned it in conversation; but I have had no official communication with these gentlemen on the subject. — Will you do me the favour to say, Sir, how it happened that these gentlemen found you out to bring you as a witness? Why I happened to mention that it was physically impossible *Lees* could have died of the wounds and bruises which he received on the 16th of August. — Will you favour us by stating, to whom it was that you happened to mention this? To *Mr. Hindley* and another gentleman, and *Mr. Cooke*. — *Mr. Cooke*, the attorney? Yes. — That is, *Mr. Cooke*, who is the attorney here for the magistrates? *Mr. Ashworth*. No, that is not

so; the magistrates have no attorney here.—*Mr. Harmer.* *Mr. Cooke* has been taking notes for them, however.—(The cross-examination of the witness resumed by *Mr. Harmer.*) Is a medical man capable of forming so correct a judgment on a subject like this, from the description of appearances given him by others, as he can from ocular observation? Certainly not; because I might see the same appearances in a different point of view.—Do you happen to know *Mr. Cox*? I have known him.—Is he a man of reputation in his profession? He was a pupil at the *Manchester Infirmary*.—How long ago? I saw him as he was coming into the house to-day, and I did not know him; and he states it was twenty-five years ago. He conducted himself extremely well at that time.—Is he a gentleman of skill and knowledge in his profession? Yes, he is much esteemed as such.—From your own experience, you know how he conducted himself twenty-five years ago? Yes.—Has he still maintained the same reputation which he then possessed? Yes, for any thing that I know to the contrary.—Would you, not having seen the body, which he had seen, venture to contradict him as to the cause of the death? Certainly.—Where he has seen the body, and of course has had ocular demonstration of the appearance of it, and you have not seen it, would you differ in opinion from him as to the cause of the death, that opinion being formed upon his description of the appearances of the body? I would.—And that you say, though you confess a person who saw the body had much better opportunities of judging than you who had not seen it? If I had seen the body myself, I might form a better opinion; and generally speaking, the same mind that formed an opinion without seeing the body, might form a better opinion if he saw the body. But I may be supposed to have seen a great deal more of that sort of practice than *Mr. Cox**.—Is *Mr. Cox* a man of skill, in your opinion? There are different degrees of skill in the medical profession, as well as in the law.—I don't know whether you have heard it or not; but it has been stated here, that this man never did recover from the injuries he received on the 16th of August, and that he was totally unable to work? I have explained particularly, that all danger from injuries that he might have received on the 16th of August, had ceased.—That he had recovered, I understood you to say? From all dangerous consequences.—From your knowledge of the skill and reputation of *Mr. Cox*, he having seen the body and opened it, and described, as the cause of the death of *John Lees*, external injuries, would you, not having seen the body, venture to contradict him? He has given a narrative of the appearances which the body exhibited. I give the opinion I have stated upon his narrative, and I am convinced it is the correct opinion, whether it agrees with the opinion of *Mr. Cox*, or the opinion of any other man.—That, you know, Sir, is a mere difference

* This is a remarkable course of examination. *Mr. Harmer's* acuteness is well known; and its exercise in this instance seems to have been perfectly fair, and almost unavoidable after the declaration of the witness. At the same time, *Mr. Simmons* appears to have met the conclusion, to which these questions conducted, very properly, up to this last observation, which borders on an assumption of superiority, and is at variance with the principle he supports immediately before it. Great allowances, however, must be made for the effect on the temper almost unavoidable from such a vexatious course of examination.

of opinion? Yes; and from what I have frequently seen of this sort of practice, I think I am more capable of forming a correct opinion on the subject than *Mr. Cor.* — The Jury, Sir, will no doubt duly appreciate the value of that self-opinion*. — *Mr. Ashworth.* Really, *Mr. Coroner*, I must interpose to protect the witness from this sort of attack. — *The Witness.* Oh! *Mr. Ashworth*, let me go on. I will teach him surgery. I am anxious for a little more discussion. He is not the first lawyer I have taught surgery. — Perhaps not, but, notwithstanding the opinion you entertain of your own skill, I should be very sorry to be under your hands. — *The Witness.* Oh! I'll teach you surgery, Sir. As you have challenged me with a castigation from different medical opinions, I hope you will bring down *Dr. Cline*, *Sir Everard Home*, and the other leading members of the faculty. I shall be very happy to see them. — *Mr. Ashworth.* I will ask you, *Mr. Coroner*, whether the witness is to be attacked in this kind of way†? *The Witness.* I am sorry you should interrupt the gentleman, *Mr. Ashworth.* I am anxious for a little more discussion with him. I should like very much to have a little more discussion with him. — *Mr. Ashworth* (to the *Coroner*.) Did you, *Mr. Coroner*, understand *Mr. Cox* to say, that the deceased died of the bruises he had received? *The Coroner.* No, I did not. — *Mr. Ashworth.* Because that has been the insinuation. — [Here much clamour ensued, and different gentlemen addressed the *Coroner* together.] — *The Witness.* I want a little more discussion. Don't interrupt the gentleman. I should like a little more discussion with him. — *Mr. Harmer.* I beg you will hear *Mr. Simmons*; he says he wants a little more discussion. — *The Coroner.* I have exhausted all my patience. — *Mr. Ashworth.* Nothing shall drive me from my question, Sir, and no clamour shall put me from my object. I ask you, *Mr. Simmons*, did you understand from the evidence of *Mr. Cox*, as you have heard it read, that he ever gave it as his opinion, that the death of the deceased was the consequence of the wounds or bruises that he had received? — *Mr. Harmer.* I said "external injuries," and that was what *Mr. Cox* said. — *Mr. Ashworth.* No such thing. (To the witness.) Did you understand *Mr. Cox* to have said, Sir, in his evidence, as you have heard it read, that the deceased died of external injuries? I did not. — *Mr. Ashworth.* This is an attempt to foist upon us evidence, as if it had been given by the witnesses. — *Mr. Harmer.* I beg leave to contradict that. *Mr. Cox* certainly so stated, though, perhaps, it may not be upon the *Coroner's* notes. — *The Coroner.* I took down all *Mr. Cox* said, which I conceived to be material to the present inquiry. — *The Witness.* I hope the gentleman may not be interrupted, the more questions he puts to me the better, so long as it only leads to discussion. — (The witness examined by the *Coroner*.) *Mr. Harmer* has said, that it was not proved the deceased had got better, because he was never able to go to his work afterwards. Do you mean, when you say the deceased had got better, that he had recovered from his wounds, or that he had only recovered from the effects of his wounds, such as inflammation, and what would have followed the wounds and bruises? I have repeatedly answered that, *Mr. Chairman*, and I have stated, that he had recovered the conse-

* What follows is much to be regretted; but I could not consistently omit it. It stands upon record, and there can be no indelicacy in quoting it.

† The witness seems to have been able to take his own part.

quences of any injuries he might have received on the 16th of August. I do not mean to state, on the other side, that he was restored to vigorous health; but, from their nature, whatever the injuries were that he had received on the 16th of August, he must have been restored to a state of safety, though not, perhaps, to a state of vigorous health. He might be poorly; though I know nothing about that, not having seen him. — He had recovered from all danger, you mean? Yes. He could not use his arm for some time, no doubt; but, by the appearances, he had an inflammation of his bowels, and he had also been afflicted with apoplexy; and certainly these could not have proceeded from any injury that he might have received on the 16th of August. — *Mr. Ashworth.* That is all, Sir, that I wish to ask you. — [The witness here addressed *Mr. Harmer* personally in the manner following.] — *The Witness.* I hope you will bring down some of my London friends, as I passed some very pleasant days with them in the spring, and I should like to see them again. — *Mr. Harmer.* Did you say that you expected to meet them here, Sir, in the spring? If you did, I think your expectations will be realised: the Assizes are held in March. — *The Witness.* No; I said I spent some very pleasant days with them in the spring, and I said I should like to see them down here. — *Mr. Ashworth.* What the witness means, Sir, is, that they are the most celebrated members of the faculty, and I hope we shall have the pleasure of their company down here, as I understand you will bring them with a view of contradicting this witness. — *The Witness.* Perhaps they may be brought down here with that view, but unless the old system is very much changed since last March, I think they will confirm all I have said. — *Mr. Harmer.* Is this to be borne, *Mr. Coroner*? Will you lend your sanction to this species of *self-sufficiency*? — *The Witness.* I certainly shall be glad to see those gentlemen down here. — *Mr. Ashworth.* I trust, *Mr. Coroner*, you will allow me to say a few words. I see that a great deal of asperity is exerted towards this witness. — *Mr. Harmer* (warmly). I take leave to say, that no asperity has been evinced by me towards *Mr. Simmons*; but that gentleman has thought fit to conduct himself in a manner that would have long ago called down the *Coroner's* censure, if I had produced him as a witness. — *Mr. Ashworth.* Depend upon it, depend upon it, *Mr. Coroner*, a loud tone of voice shall not stop me. Depend upon it, Sir, by clamour I shall not be made to recede from my duty; but I may be allowed to say this, that *Mr. Simmons's* time (if his own description of his situation is to be believed, and I trust that will not be attacked,) is of the greatest importance to himself, and to the Infirmary, where it is of the greatest possible benefit to the public. I trust, therefore, Sir, that as his time is so very valuable, in order that he may not have the necessity of coming here a second time, he may be allowed now to sign his examination, or in the course of this day; and if he be wanted again to give any further evidence, I pledge myself that he will most cheerfully come over. — *The Witness.* I have only to say, *Mr. Coroner*, that I wish very much to get back to my duty, but I would not, on any account, return, as long as a single mind present is dissatisfied with any thing I might have said. I wish to give the fullest and clearest explanation of what I may have said, divested of all technical language; and, if the gentlemen wish, I will wait here any time to explain to them. — *Mr. Ashworth.* I merely submit, *Mr. Coroner*, that it might be advantageous to the witness, considering the public situation he holds, that his deposition may be read over to him,

and signed by him in the course of this day. — *The Coroner*. Yes, certainly. It shall be so. — *Mr. Battye* (to the witness). I will make out your deposition, Sir, and I will let you know as soon as it is ready*.

INFANTICIDE†.

CHARGE OF INFANTICIDE, FOUNDED ON IRREGULARITY IN THE INQUEST.

Case of ELIZABETH HYDE.

IN the month of April 1821, a coroner's inquest was held on the body of a female child, which was found in the cess-pool of the house of MR. TAYLOR, *Ranelagh Place, Pimlico*.

Mrs. Ravens stated she was a midwife, and attended *E. H.* on Friday morning last, and found she had been recently delivered. The woman was remarkably sullen, and would not answer any question which the witness put to her. Witness is firmly of opinion, that the infant was born alive. She never knew a still-born child to bleed after its birth. (Here one of the jurymen observed, that when they went to view the body, it had the appearance of having bled at the nose.)

Dr. Watkins stated, that he went on Friday, by direction of *Mr. Hume*, to advise about the removal of the woman to the workhouse. He found her in a dangerous state. On his interview with her, he advised her not to say any thing which might criminate herself. She told him nothing. He found she had been delivered‡ — has seen the child, and it was, in his opinion, arrived at its growth. There was some congealed blood about the nose: could not say whether the child was born alive.

Mr. Th. Leigh, apothecary to the hospital, stated that the child might have died for want of proper attention: could not say whether the child was born alive.

Verdict of *Wilful Murder*.

The above is taken from a newspaper report, which was sent to me by a member of the profession, who interested himself in

* The proceedings which took place in the Court of King's Bench connected with this inquest, are particularly important as regards the hint thrown out in page 168, on the qualifications for the office of coroner.

† I have been sparing of cases belonging to this most important point of medico-legal inquiry, as I have the view of discussing it with more minuteness, than has been hitherto in my power, in a separate work — and of exhibiting more advantageously the doctrines that will require particular cases for elucidation, in closer reference to each other. What is here introduced relates rather to the usage and economy of evidence, than to the particular scientific bearings of the subject.

‡ A professional man has no right, in such circumstances, to put any questions but such as are necessary for the discharge of his immediate duty.

the case — apprehending that the woman's life was placed in jeopardy, upon such vague grounds as the evidence adduced. As a precautionary measure, I transmitted to him the following communication.

“ * * * * * Though apparently, from the positive statement of the midwife, *Ravens*, the coroner's jury thought it their duty to return a verdict of wilful murder against the mother, that circumstance, of itself, amounts to no more than a declaration of their opinion, that there are grounds for farther inquiry; and I am inclined to think, provided no stronger evidence be adduced on the trial than what appears in this account, that the prisoner stands every chance of acquittal. For,

“ 1. The bleeding at the nose is too vague a circumstance to draw any positive conclusion from. 2. No dissection seems to have been made; without which, in the absence of positive evidence as to the vitality, I cannot conceive how any opinion on that point could have been given. 3. There is no allusion to any mark of violence, or species of violent death.

“ At the same time, a number of circumstantial considerations must, in all probability, be taken into account; and a charge of concealment may, perhaps, be made out. The case must, of course, lie under great obscurity, as the accused has not yet offered any account of the matter in exculpation. What she has to say, may, perhaps, alter its complexion.”

TRIAL*. Old Bailey, June 8. ELIZABETH HYDE was tried for the murder of her infant child on the morning of the 6th of April.

According to the evidence of *Mrs. Taylor*, in whose service the prisoner lived, the latter was delivered of a child on the morning of the 6th of April; but, from the circumstances adduced in evidence, there appeared no reason whatever to infer the crime charged.

Mr. Justice Bailey observed, that it would be much better if coroners took more pains to investigate cases of this kind, before they directed juries to return a verdict of wilful murder. It ought, at least, to be proved before them, that the child was born alive, before the jury could, on their oaths, return such a verdict. He made these observations publicly, because he wished coroners would be a little more attentive to their duty.

Mr. Baron Garrow said, that upon the depositions which had been returned by the coroner, there was no pretence whatever for charging the unfortunate woman at the bar with murder. They were returned, too, without being signed, as if they came from a chandler's shop†; so that, if it had been necessary to have contrasted their contents with the evidence of the witnesses in court, it could not have been done, as they were not signed.

* Public prints.

† When the reader peruses this part of the learned judge's observations, he will recollect the caution given above, (page 55,) respecting the importance of what he may say, even before a slovenly inquest, such as this seems to have been; and mark the circumstance of evidence given before a coroner, being liable to contrast with that adduced before a superior court.

CASE OF INQUEST*.

A CHILD was taken out of the basin in Hyde Park, dead. An inquest was held at a neighbouring public house, at which Mr. H***** attended, and deposed that he had opened the body of the deceased, which, in his opinion, *was near a month old*. He had minutely examined *the vital parts*, but could not decide what was the cause of its death. The body exhibited signs of approaching putrefaction, and must have been dead some days. There were no distinct marks of violence on the body, nor was there any internal or external evidence, by which he could ascertain the cause of the deceased's death.

Coroner. I wish to know if the surgeon can say if the deceased was thrown into the water alive, or dead? I cannot.—Have you examined the lungs, and made any experiments, by putting them into water? I examined the lungs, but the practice of putting them into water to try if they float or sink, is now *completely exploded*—having been proved to be founded on false principles †.

INFANTICIDE.

IDENTITY OF THE BODY‡.

IN the month of Nov. 1822, the body of a child was found, and an inquest was held at the Golden Anchor, Clerkenwell. The child had been doubled up, and tied with a cord; there was blood about its face, and the skull had the appearance of having been fractured.

The parish beadle stated, that the surgeon had declared the body to be in such a putrid condition that it was utterly impossible for him to say whether it was born alive or not.—The jury proceeded to examine the body, when that of a fine child perfectly fresh was shewn them, and the mark of a violent blow was perceptible on the left side of the head. They desired Mr. S***** the surgeon, to be sent for, but he not being in the way, his assistant came forward, and stated, that on Sunday morning witness examined the body of a male infant at the workhouse, Mr. S. being present. They did not try the usual test, for the body was in such a putrid state, that it was useless§. The witness persisted in saying, that on Sunday the body was in a state of high

* From the Morning Herald, Jan. 17, 1822.

† As to the soundness of this gentleman's doctrine, I shall say nothing here, referring to the Principles, page 345; but on the last question put by the coroner I beg to remark, that the sinking or swimming of the lungs of a child *near a month old*, has about as much to do with the question of natal vitality, as if they had been inflated as often as those of Methuselah.

‡ Public prints.

§ But when matters are so, it is by no means a thing of course, that the lungs partake of the putridity. Principles, p. 350, &c.

putridity. The jury expressed their dissatisfaction with *Mr. S.*'s conduct in not opening the body. In a short time afterwards, *Mr. S.* himself arrived, and gave his testimony precisely to the same effect as his assistant. The jury still expressing their surprise, *Mr. S.* desired to see the body again. This request being granted, he left the room, and returned in a few minutes, stating, that the child now shewn him was not the child he had seen before. The old nurse from the workhouse being examined, cleared up the mystery; for it appeared that when *Mr. S.* had called at the workhouse on Sunday morning, he was shewn another child, (that had been born dead,) in a putrid state. The jury apologised to *Mr. S.*, who having opened the body with another practitioner, they shortly returned, and stated their perfect belief that the child had been born alive. Two of the bones of the skull were fractured, and the brain was ruptured.

MAIMING.

Case of WOODBURN and COLE, tried for disfiguring EDWARD CRISPE, 1722.*

Mr. Surgeon sworn.—I am a surgeon by profession, and the 1st day of January last, at night, about eleven o'clock, I was sent for to *Mr. Crispe*. I found him very much wounded and cut, and in a very weak condition, and that he had lost a great deal of blood. I examined his wounds; one wound began at his right ear, divided the fleshy part of his cheek, and ended on his upper lip, just under his right nostril; the flesh was all divided, and the jaw left naked. Another wound divided the right side of the nostril, and made an oblique cross over the wound, and ended near the right under-jaw.—Was his nose slit? Yes, Sir; the nose was cut from without, into the nostril; the edge of the nose was not cut through, but there was a cut or slit in the nose, that went through. I sewed it up. It was indeed but with one stitch: it is yet visible, and the nose was cut through.—Were there any other wounds? There was another deep wound under his chin, that reached from one jaw to the other. There was another wound, which began at his chin, crossed the left under jaw, and tended towards his ear. There was also a small wound on his left cheek, another on his upper lip, and another on his left temple.—How many wounds had he in all? Seven.—Do you think there were seven distinct wounds, that had seven distinct blows? I take it, that every one of the seven wounds had a distinct blow.—With what instrument did you apprehend those blows were given? It was cut so clean, that I thought it was done either by a knife or razor.

[The prisoner *Cole*, in the sequel, desired to know of the chief justice whether the nose could be said to be slit within the meaning of the statute, when the edge of it was not cut through? *Lord Chief Justice*. It is true, the edge of the nose was *not slit*,

* State Trials. See Principles, p. 592.

but the cut was athwart the nose ; which cut separated the flesh of the nose, and cut it quite through into the nostril : this I take to be a slitting of the nose, and *the surgeon swore the nose was slit**].

SURGICAL OPERATIONS †.

The case of PHILIP HAYNES, and MARY CLARKE, tried for Murder.
Northampton, March 1821 ‡.

Robert Wildegoose, esq. a surgeon of *Daventry*, and formerly a surgeon in the army, examined. — I am conversant with gunshot wounds. I was sent for to attend the late *Mr. Clarke* ; saw him about six o'clock on the Saturday evening ; found him on the bed, exhausted from loss of blood. I examined him, and found the principal wound was in the under part of the elbow joint ; there was another wound higher up ; the first wound was so large, that I could put my fingers in ; it had then stopped bleeding. I found the bone so much injured, that I advised amputation ; * * * the arm was amputated about nine o'clock ; it was taken off between the elbow and shoulder ; we secured the blood-vessels ; we then examined the limb taken off more particularly, and found two loose pieces of bone, and some shots, which had been opposed against the bone ; we also found the principal artery had been divided, which necessarily occasioned great loss of blood. I saw him the next morning, about eleven o'clock ; he had a little fever, but was as well as I could expect ; I saw him again on Monday, between ten and eleven o'clock ; he was very weak, but perfectly sensible ; I thought him then in a dangerous state ; I remained with him for some hours ; he was an elderly man—67. In my judgment, the wound was the cause of his death.

(Cross-examined). — I recommended amputation, which I thought absolutely necessary. I did not repent this opinion ; I thought it the only thing that could be done for him ; there was no hæmorrhage, and he did not lose a table-spoonful of blood after I got there. I cannot

* The reader will do well to mark the authority on which the judge *appears* to have inferred the fact of *slitting* : “ the surgeon swore the nose was *slit*.” This was not the only occasion on which the meaning of this word was discussed, (*Principles*, p. 395,) and referred to surgical authority. In my opinion, *legal* || or philological usage would be the proper source for reference. A slit of the nose must be so designated, because it resembles any other slit.

† The question here concerns the propriety of performing operations. See *Principles*, p. 395.

‡ From the trial, printed at Northampton.

|| From this source we have recently derived an additional meaning of the word *frequent*.

say that, if amputation had not taken place, he might not have lived.

Re-examined.—Did not repent having taken the arm off, thinking it the best course he could pursue, and that he should do the same again. To a question from the judge, witness said, that it would certainly have been more dangerous to have *dissected** the arm, and allowed it to remain on.

Thomas Waterfield, esq. examined—I am a student of Christ's College, Cambridge, and have studied surgery and anatomy in the hospitals of London and *Edinburgh*. Witness, on seeing *Mr. Clarke*, found him on the bed, extremely exhausted from loss of blood, which was streaming through the bandages. "I stopped the bleeding by pressure on the artery which passes beneath the collar bone, and then gave him a little spirits, which revived him. * * * *Mr. Wildegoose* arrived in about half an hour; * * * in the course of three or four hours, the amputation was performed. The arm was carried to *Badby*, and in two or three days afterwards, dissected."

Witness had no doubt his death was occasioned by great loss of blood, and irritation from the wound.

Neither of these witnesses gives any account of the probable, or immediate cause of death.

INSANITY, PLEADED IN BAR OF PUNISHMENT.

The Case of SIR ALEX. GORDON KINLOCH, Bart., tried for the Murder of his Brother. Edinburgh, June 29, 1795 †.

THE first professional witness examined, was

Mr. George Sumner, surgeon in *Haddington* ‡. — Lord Justice Clerk §. The last time you saw the panel, previous to the event that took place, is it your opinion, that he was then in such a situation as not to distinguish moral good from evil, and not to know that murder

* This can be explained only on the principle which has been adduced, to account for much of the unintelligible text of Shakespeare's plays, to which so many shrewd ones have owed their fame as commentators. Some word has been used by the witness, which imperfectly reached the untechnical ear of the reporter, who may have thought *dissected* the most probable guess, in a matter of surgery. Query, if substituted for *dressed*? The sounds are not alike, but the compositor may be the author of the error.

† State Trials.

‡ I omit great part of the preceding questions.

§ *Macqueen* of Braxfield, of whom some curious notices are given in Peter's Letters to his Kinsfolk; and many still more so, are well known in Edinburgh.

was a crime? I cannot say; I do not know what he could distinguish. —Is it your opinion? When I saw him on the Monday, and on the Tuesday, I considered him mad*.

Mr. Solicitor-General†. Was he mad to such a degree, as not to be able to distinguish good from evil? I cannot answer the question in any other way, than that I thought him perfectly mad. — (Ordered to withdraw.)

COUNSEL FOR THE PRISONER.

Mr. Hope‡. I could have wished that a question of this nature had been allowed to come from the prosecutor, because then I might have commented upon it with greater freedom, than I can do since it has been suggested by the court. The question, however, I think was a proper one, and it was properly answered. The witness, after repeated interrogations, said, that he could not take upon him to tell what the panel could distinguish; but that when he (the witness) saw him, on the Monday and on the Tuesday, he considered him mad. He says again, “I cannot answer the question otherwise, than that I thought him perfectly mad.” And I must say, that, as a professional man, he could not answer it otherwise than he has done. My Lords, I am not of the witness’s profession; but, as a man who has paid some attention to the human mind, and to human nature, I must repeat, that the question was answered as it should have been.

My Lords, I have made some observations on madmen myself. Persons in that unhappy situation, are too often exposed to the impertinent visits of strangers; at least it used to be so in *London*: and well I remember, when, at an early period of life, led by the idle curiosity of a boy, I have gone to view the places of their confinement. But, my Lords, I hardly ever saw a man so mad, (though lying naked, and chained on straw,) who, if the abstract question were put—do you think murder a crime? would not answer in the affirmative. Madmen, my Lords, will often talk rationally on any subject, until you come across that particular topic which has deranged their understanding. I therefore submit, that it is not proper to press the witness for a more particular answer. Has he not said that the panel was perfectly mad? The prosecutor talks of degrees of madness; but there is no degree in perfect madness—this is already the superlative degree. And when a witness—a professional man—has declared that he cannot answer the question otherwise, I say, that any other answer he may give, cannot be an answer according to his conscience. * * *

Lord Advocate§. My Lords, I do not intend to press the witness any further on that point. If my brother supposes that I meant to press him to make an answer contrary to his conscience—that I meant to push him to give me a different answer from that which he has chosen to give—he has much mistaken my meaning. When I proceeded to press him a little further, it was only to discover what was meant

* The accident happened in the night of Tuesday.

† The late *Lord President Blair*.—See *Peter’s Letters*.

‡ Afterwards *Lord Justice Clerk*, and now *Lord President* of the Court of Session.

§ *Sir R. Dundas*, afterwards *Lord Chief Baron* of the Exchequer in Scotland.

under the words "perfectly mad." What I mean to press from him goes thus far—to see whether the same general question, at any particular period of time, will receive the same answer. This, I contend, I am entitled to do; and I shall judge from the answers that may be given, what inference I shall draw to the jury.

(*Witness recalled.*)—*Lord Advocate.* When you saw the panel on the Monday, was he in such a situation as to discern good from evil? or to know that murder was a crime? I cannot say that he could.—When you saw him next night*, can you say, from ten at night to three in the morning, that the panel was in a condition to discern good from evil, or to know that murder was a crime? I have not had much practice in cases of insanity, and what such persons may think, I am at a loss to say.

You have told us that you cannot say, that when at *Fairbairn's*, on the Monday, the panel could not discern good from evil; and that, with regard to the second period, you have not had much practice in cases of lunacy—very proper answers. Now, did you observe any difference in that time, and on what side lay the difference? I did not observe any difference until he came into the parlour, and then he appeared worse.

(*Cross-examined.*)—*Mr. Hume* †. * * * * * If you were carried from this room to *Bedlam*, and there shewn a lunatic in his cell; if this lunatic, on being asked, 'if murder is a crime?' should answer 'yes,' would you, on the faith of that answer, think it safe to put yourself in his power, or to venture within his reach? I would not. *

* * * * * *Mr. Moncrieff* ‡ (one of the jury). How long have you been surgeon to the family of *Gilmerton* §? Twelve years.—Do you know of any hereditary diseases in the family? No.—Can you assign any cause for the panel's derangement? No. *

* Do you think that the resistance of cold, hunger, and sleep, affords the best marks of distinguishing insanity, from cases where it is only feigned, to serve a particular purpose? I think it does.

Mr. Mc. Aulay || (another of the jury). * * * * * Do you think that drink might have produced the same behaviour? I never saw him in the same situation before.—Do not you think, that the passions of the mind, such as fear, anger, revenge, jealousy, &c. may produce temporary fits of insanity? I think they might have put a person much in the same situation.

Mr. Benjamin Bell sworn. * * * * * *Lord Advocate.* What passed when you saw *Sir Francis*? I found him lying in his

* The night of the catastrophe.

† Now, one of the Barons of the Exchequer, and late Professor of Scots Law in the University of *Edinburgh*. *Mr. Hume* is nephew to the historian, whose Christian name he bears, and the author of *Commentaries on the Law of Scotland*.

‡ An eminent apothecary in *Edinburgh*.

§ *Gilmerton*, a village and estate near *Edinburgh*, belonging to the family of *Kinloch*. In Scotland, the proprietor is often designated by the name of his family estate, as I have already noticed.

|| A druggist in *Edinburgh*.

bed, in great distress. He had been shot under the breast-bone.—Did you believe the wound to be mortal? From all the symptoms, I judged him to be a dying man.—Did you remain in the house till *Sir F.* died? No; I waited till six o'clock next morning, not thinking it necessary to remain longer.—Are you of opinion, that the wound was the cause of his death? Yes.—Did *Sir F.* hold any conversation with you, concerning the person who wounded him? He never did, except asking what was become of that unhappy man.—Did he not name the person? No.—Did *Dr. Monro* attend? *Dr. M.* was sent for, along with me, but did not go.—When you first of all examined the wound, on Wednesday morning, did *Sir F.* tell you how he had got it? I had been told, that the person who fired the pistol was uppermost on the stair, and therefore I imagined the ball might have taken an oblique direction; but *Sir F.* gave me a distinct account of the accident, by which I understood that the ball had gone right across his body, and I felt it with my hand, near the back-bone, from whence it was extracted.—Did you open the body after death? Yes. * * *

(Cross-examined by *Mr. Hume*.)—Deponed, that he visited the panel twice a-week, from the 24th of May, and sometimes remained with him fifteen or twenty minutes; that he generally sent up previous notice of his being there; that he cannot give an opinion upon these his visits; that the panel might not be furious upon the fifteenth April, nor even that he might not shew symptoms of derangement in the intervals of his visits; for that the state of insane persons is liable to sudden and unaccountable variations; that he would not pretend to know a mad-man by the state of his pulse or the feeling of his skin; for that, though in the beginning of insanity there is often fever, yet a confirmed state of insanity is not ordinarily attended with any; and that in this, the delirium of a fever is distinguished from that of insanity. That mad-men can very often distinguish their keeper, or those who are very much about them; that in many instances they are capable of dissimulation, and shew cunning and contrivance to gain their ends; that one of the most constant symptoms of madness is a jealousy of plots and conspiracies against them; and that most frequently the objects of these suspicions are their best friends, or the persons to whom they have been most attached; that the most certain means of distinguishing a mad-man are—1st, by his actions and conduct; 2dly, by the appearance of his countenance, especially of his eye, which has a peculiar wildness; that restlessness, want of sleep, odd postures, strange gestures, and the like, are also among the indications of the malady; that if a person has been subject to occasional derangement, and should swallow a great quantity of laudanum, this, in his case, might be more apt to produce a *furiosity* of a few days, and the person afterwards make a quick recovery, than in the case of a person who had never been subject to such disorder. That the confinement, solitude, and quiet of a jail would be likely to promote and assist such recovery.

Dr. Alexander Monro examined.—Have you attended the panel in jail? Yes.—How often have you visited him? Four different times since the 24th of May.—What situation did you usually find him in with regard to his mind? I saw no marks of insanity.—Did you converse with him? I did.—Did you feel his pulse when you visited him? Always, and I found it calm and regular.

(Cross-examined.)—Deponed, that he had paid the panel four visits in jail, after the 24th of May. Being asked the same questions as *Mr. Bell*, he made the same answers in substance; and in particular, being

asked whether madmen were more apt to be jealous of their enemies or of their friends and near connexions—he answered, that their friends were most commonly the objects of their suspicion, and that he thought it natural it should be so; for, as madmen were not sensible of their own condition, nor of the necessity of restraining them, and as friends and relations were chiefly active in controlling, or imposing restraints on them, so these persons irritated them, and, in consequence, became the objects of resentment. He added, that in his visits to the panel, which might be from seven to fifteen minutes, he avoided any topic that could irritate him*; and that if he had remained a whole or half a day with him, he could better have judged of his condition; and upon the whole, that he could only give an opinion as relative to the times and occasions when he saw him, and nothing more.

Lord Advocate. Did you ever, in the course of your practice, know a person who went mad for forty-eight hours, and then recovered, and continued well? Never, except when the person had swallowed a great quantity of liquor, or owing to some adventitious cause.—*Mr. Hope.* May not a person who has been subject to fits of madness become suddenly insane, and recover again? He is more apt to do so than a person who never was insane.—May not the taking of laudanum, by a person who has been occasionally insane, produce a fit of insanity? Yes.

Charles Hay, esq.† advocate.—(*Solicitor-General.*) Were you well acquainted with the late *Sir F. Kinloch*? I certainly was.—Did he consult you upon any points after his father's death? He did ask my opinion respecting his father's settlements, some time after his death.—Will you be so good as mention every thing which you remember that passed between *Sir F.* and you upon that occasion; and, in particular, any thing respecting differences which had occurred between him and the panel? *Mr. Hay* (addressing the court). My Lord, it is a delicate situation in which I stand; I am called upon to give evidence, not to facts consistent with my personal knowledge, but to disclose conversations, of a confidential and private nature, that passed between *Sir F.* and me, not only as a friend, but in my professional character of a lawyer. I should, therefore, be glad to know from the court, whether it is their opinion, that I am bound to give an account of these confidential conversations. *Lord Justice Clerk.* Your delicacy, *Mr. Hay*, is proper; but it is the opinion of the court, you ought to answer the

* At first sight this may appear to have been very correct on the part of our celebrated preceptor; and certainly, if *Dr. Monro* visited this unfortunate gentleman merely in the capacity of his private physician, knowing him to be insane, it was strictly so; but I think we are at liberty to surmise, that it might have been his object to have ascertained for himself the fact of the prisoner's actual insanity, with a view to the trial—if so, the studied evitation of particular topics was not the way to ensure success. I enter this remark, not for the purpose of questioning the propriety of *Dr. Monro's* conduct, but to caution those who, upon reading this part of his evidence, might, without thinking, adopt it as an example for their own guidance, in proceeding to discover the state of a person's mind, with a view to judiciary satisfaction.

† Afterwards, if I mistake not, one of the most esteemed judges of the Court of Session, as *Lord Newton*; and now deceased.

question. When called upon in such circumstances, and in a case of this importance, it is your duty to give the court and jury all the information in your power—which *Mr. Hay* proceeded then to do).

Mr. Alexander Fraser, sheriff-clerk of *Haddington*, (on his cross-examination). * * * Did *Miss Kinloch* give you any information of his behaviour on the preceding night?

[Here the witness looked at some notes which he said he had taken in his calmer moments, after he was informed by some of the gentlemen in court that he was likely to be called upon to give evidence in this trial. He then proceeded reading from the notes.]

* * * * * *Lord Advocate*. I must object to this mode of proceeding. There can be no objection to a witness refreshing his memory from notes before he comes into court, but he is not to prepare a paper, then come to the foot of this table, and read his narrative from beginning to end, and then to go away. That, I say, cannot be admitted as evidence.

(Witness ordered to withdraw.)

Mr. Hope. My Lord, I trust I know something of law, and have some idea of common sense and reason; and I believe I know something of the law of evidence also. My Lord, I admit that, if a witness were to take from his pocket a paper, lay it on the table, and say ‘there is my evidence,’ such a proceeding could never be admitted by your Lordships; but the case is very different, when a witness, after an affair has happened, who, because he was not present at the accident, could not know or suspect that he was to be a witness, takes down notes, as soon as he is informed that he is to be called upon, and looks at them here to assist his recollection, on a specified question being put to him. When I undertook the defence of the panel, *

* I went to *Gilmerton*, to see what could be made out from the information of the family, and I learned, from the servants, that *Mr. Fraser* had been there the day before the accident happened. When I came back to him the next morning, he had been recollecting in his bed, and now remembered a number of circumstances that had escaped his memory the day before. Then said I, “*Mr. F.* put down in writing all that you remember, as each circumstance occurs to your recollection; for, as you did not recollect these things last night, it is probable that you may not recollect them when you come before the court, concerned and agitated as you may be.” Now, my Lord, was there any thing improper in this? *Court*. No. — *Mr. H.* Then is not the witness bound, by the obligation of the oath which he has taken, to look at his notes; for that oath requires him not only to tell what he recollects, but all that he knows, or shall be asked of him*. If, therefore, a witness is conscious that things may have escaped his memory, he is bound to resort to any means that can render him more accurate. If a witness takes down notes at the time an affair happens, he is always allowed to resort to them to refresh his memory. The case is the same with a person who takes notes the moment he is told he is to be called as a witness. The notes are the best evidence he

* See the oath, page 167.

can bring, and he is equally entitled to use them. * * * I say, that in law, in reason, and in justice, he is entitled to use them, when his recollection fails. I do not desire that he shall read his paper from beginning to end, but only that he shall be at liberty to use it occasionally to refresh his memory.

Lord Advocate. * * * If, in the course of examining any witness, he shall find himself at a loss, and desires to consult notes taken on the spot, and at the very time a transaction happened, I say it is competent for a witness to refresh his memory: but it is not so with notes taken at a distance of time; they must be taken immediately, because it may be in the power of a witness, by means of such notes, to make up so connected a story, that I defy the counsel, on either side, to make out the fraud. I am far from saying that this witness has any such design; * * * but, as public prosecutor, it is my duty to prevent the establishment of any bad precedent. * * * I shall only add, that it was held on the trial of *Mr. Horne Tooke*, that notes taken at a distance of time could not be used by a witness. The point was long and ably contended by both sides of the bar, and, at last, decided against the admission.

Lord Eskgrove *. There are certain rules which we should never relax. If a man comes to this bar as a witness, he is to swear to what he now remembers, not to what he formerly remembered. * *

* * A man who has been present at any interesting occasion, when he expects to be called upon as a witness, may take notes, and produce them in court; but this is very different indeed from a narrative taken at the distance of weeks. I am decidedly of opinion, that the witness is not entitled to use these notes.

Lord Swinton †. A witness may make use of notes taken down at the time an affair happens, but not when taken down weeks afterwards. There would be no harm in the witness looking them over before he came in here, but to take them out here is against all rules.

Lord Dunsinnan ‡ agreed with these judges.

Lord Craig § thought the witness might have recourse to his notes when any particular question was put to him.

Lord Justice Clerk. * * * That a witness is not allowed to take out a paper, read it over, and say 'there is my evidence,' this I allow; but it is admitted by your Lordships — it is admitted by the Lord Advocate — that a witness may make use of notes taken at the time the fact happened. Now, where is the difference, though they are taken *ex post facto*, if he is ready to swear that he took them down with a good recollection? I therefore think, that if the witness does not recollect any circumstance, he has a right to look at his notes before he answers the question; and then, if he says upon the great oath which he has taken, that these are facts, they ought to be received

* A judge of the High Court of Justiciary.

† Another of the judges.

‡ Sir William Nairn, also a judge.

§ Another of the judges, known as an elegant writer, and one of the contributors to the *Mirror*.

All these judges are now deceased.

in evidence; not, indeed, giving the notes as his deposition, but using them only for the purpose of refreshing his memory.

Mr. Hope. Your Lordship must know that was all I asked.

[The court decided, by a majority, that the witness was not entitled to look at the notes. Recalled, and informed that he must not take them out.]

WITNESSES FOR THE PRISONER.

Miss Kinloch.

[This lady was in the outer parliament house. *Mr. Hope* waited upon her, by permission of the court, to inform her, that she was the next witness he meant to adduce. He remained only a few minutes, and, when he returned, addressed the court in the following terms:—]

My Lord, I am now under the necessity of calling upon your Lordships to review your former judgment. I have been with *Miss Kinloch*, and I found her in a condition which I cannot describe. In such distress that, by heavens! were it my own life that was depending, I would not ask her evidence. She has declared to me, that unless she is permitted to look at her notes, she cannot promise to answer a single question. Will the court, under these circumstances, adhere to the judgment already given?

Lord Advocate. * * * * * That he or she, who, upon a question being put, does not recollect, may look at notes taken at the time, and then make answer, is what I shall not oppose; but, my Lord, if any thing more is meant, I do say that it is contrary to the practice of this court, and would be establishing a most dangerous precedent. * * * * *

Mr. Hope. My Lord, since I began to make the law of nature my study, I have always thought that, if there is one maxim which ought to be held more sacred than others, it is, that mere form shall never stand in the way of truth and justice. Now, my Lord, how are these to be obtained, if witnesses are to be precluded from giving their evidence in the only manner in which they possibly can give it? *

* * * * * The counsel at the table are not the only counsel for the prisoner — your Lordships are bound, as much as we are, to see that his cause is not injured — and is it reason, or justice, to refuse to allow this lady to look at her notes, when she has declared that she cannot give her evidence in any other manner? My Lord, it is not for *Miss Kinloch*, it is for her sex I ask it. Must not any woman of delicacy be confused and agitated at appearing before this public court? How much more so on such a melancholy occasion for which this lady comes. When she is in such a situation of distress — a situation which, were she not in, I am sure both your Lordships and the gentlemen of the jury would think it a much stronger objection to her testimony, than giving her evidence from notes — will you, or can you, deny her the assistance necessary for counteracting the confusion and agitation which it would be a crime in her not to feel? But it is not to your feelings, it is to your justice I appeal — for what is the objection, but a matter of form? Your Lordships have said, that when she is on the other side of that wall, at the very moment before she enters this court, she may peruse her notes; but, when she comes to the foot of this table, that is, at the very moment when she stands

most in need of her notes, she is not to look at them. Shall it be said, in this free country, in this enlightened age, that truth shall be withheld upon such frivolous pretences? Upon such a mere fiction, nay, what I had almost called a quibble of the law? My Lord, were I the conductor of the prosecution, I declare I would rather abandon it altogether, than support it by such means.

[The court here determined that *Miss K.* might look at her notes, and then give her evidence upon oath.]

Lord Justice Clerk. I was always of opinion, that witnesses had a right to look at their notes, for the purpose of assisting their recollection; but, at the same time, I think *Mr. Hope* was rather too warm, when he said that your Lordships were putting form in the place of justice. It was not on account of form that the court decided against a witness reading his notes; but from a desire of keeping pure the channels of justice, by suffering no practice to be established which might tend to corrupt them.

Dr. James Home—

After some preliminary details concerning indications of insanity on the part of the prisoner, prior to the event of shooting his brother, was farther examined thus:—

Were you called to *Gilmerton* after the accident which befel *Sir Francis*? In what situation did you find him? and had you any conversation with him, particularly respecting the accident? * * *
Dr. F. Home and I went out to *Gilmerton*, and got there by half-past-nine in the morning. We found him in such a situation that he could not live many hours. He gradually sunk, and died about half-past-eleven the same evening. He remained perfectly sensible until within an hour of his death. I seldom left him for above ten minutes at a time. He talked very little, and only once about the accident which had happened to him. About two or three o'clock, *Sir F.* asked me, "What have they done with my poor (or unhappy) brother?" I answered, "He was carried to Haddington jail last night." *Sir F.* replied, "It would have been much better to have sent him to a private mad-house about *Edinburgh*." "But you know," said I, "that this unhappy accident must now become a subject of legal investigation, and he is committed to Haddington jail by orders of the sheriff." * * * I asked him, "Did you actually seize upon *Gordon* before the pistol was fired?" *Sir F.* answered, "Yes." "Good God! *Sir Francis*," said I, "how could you be so foolish as to attempt to lay hold of a man in a state of such furious insanity, and with arms about him?" *Sir F.* replied, "There would have been no danger if the servants had done their duty." This conversation made such an impression upon me, that I instantly retired to a corner of the room, took a card out of my pocket, and wrote it down.

The rest of the Doctor's evidence went to prove insanity subsequent to the event in question.

Dr. William Farquharson, the next and last witness, made out the fact of insanity on the part of the prisoner very satisfactorily.

The Lord Advocate, in addressing the jury, introduced the following observations : —

“The law of Scotland, in respect to the plea of insanity, is and must be the same with the law of England, because both are founded in the plainest and most obvious principles of justice. It is such as entitles the person who kills his fellow-creature to the full benefit of the defence of insanity, if he can prove it on a fair trial; but, I do say, under correction of the court, that it is only he who is absolutely insane, who is perfectly mad or furious, that is free from trial, and, consequently, free from punishment. He who is subject to temporary fits of complete and perfect madness, cannot, in like manner, be punished for the actions he commits in the midst of his delirium; but for those committed in his lucid intervals, he is, with exceptions unnecessary for you to attend to at present, as competent to trial and punishment as any other man.

“But there is a third description of persons,—and to this I beg your particular attention, for it is the description under which the present case falls,—I mean that degree of derangement which has been attributed to the panel; that degree of melancholy and depression of spirits, which, though it may border on insanity, is nevertheless accompanied with a sufficient share of judgment to discern good from evil, and moral right from wrong; which never has, and never can be sustained as a bar to trial, or a defence against punishment for a crime so atrocious as murder; but subjects such persons to conviction and punishment, as much as if no symptoms of derangement had ever appeared, or as if complete evidence had been laid before you that he was in a lucid interval, and in the full possession of his senses, when the action was committed.”

The learned Lord then quoted the authority of *Sir George Mackenzie* and *Chief Justice Hale*, in support of these opinions; and his arguments should be perused by every medical man.

In the course of *Mr. Hope's* address there are the following passages.

“I shall not pretend to enter the lists of definition, either with the learned Lord himself, or with *Mc. K.*, or with *Hale*; they are all great and able men; but I suspect much that they are better lawyers than physicians, and that they have given way too much to a professional propensity to subdivide and methodise. For my part, I shall not attempt to reduce madness to fixed rules, nor to define the different kinds and degrees of it, which I have always found to be as numerous and diversified as the unhappy persons who were the subjects of the disorder. I shall not speak to you in technical language, which none of us probably understand, and which, unapplied to particular cases, and unexplained by examples, conveys to my mind no positive and precise ideas.

* * *

The learned Lord has contended, that the prisoner's malady was mere melancholy and depression of spirits—that he was not mad—was in the perfect knowledge of right and wrong—knew friends from foes—and was perfectly conscious of the nature of a crime. What, then, must the learned Lord say of the attempt to confine him? Is he prepared to say that *Sir Francis* and the family were in a foul conspiracy against the prisoner? that they were attempt-

ing against him a crime little less horrible than that of which he is accused? Is he aware, that the prisoner's conduct would then have been completely justifiable? For if there is any crime or attempt in nature which may be repelled by the death of the aggressor, it is a conspiracy and attempt to confine as a madman a person who is not so. * * * *

"I will not dwell an instant on the case of *Lord Ferrers**. It agrees in no point with this, but that the word madness occurs in both. Lord F. did not fail in proving that he had been occasionally deranged, but he failed totally in proving that he was deranged at the time; or, rather, it was clearly proved that he was in his perfect senses — he was proved to have acted from the most determined revenge, and to have laid his schemes in the most deliberate manner."

Lord Justice Clerk. * * * If a man be totally and permanently mad, he cannot be guilty of a crime; he is not amenable to the laws of his country. * * * When a man, in total, but temporary, insanity, commits a crime, he is liable to trial; but, when he pleads insanity, it will be incumbent on him to prove that the deed was committed at a time when he was actually insane. There is a partial insanity, which only relates to particular subjects or notions; — such a person will talk and act like a madman upon these matters; but still, if he has as much reason as enables him to distinguish between right and wrong, he must suffer that punishment which the law inflicts on the crime he has committed. * * * *

The jury unanimously found the prisoner insane. The court gave judgment, that he should be detained all his life in the Tolbooth of Edinburgh, unless his friends would give security to the amount of 10,000l. sterling for his safe custody; which was done.

From the Evidence of several Medical Men examined before the Committee of the House of Commons†.

The Right Honourable *George Rose* in the chair.

Mr. William Lawrence examined. What is your situation? I am assistant-surgeon to *Saint Bartholomew's Hospital*. — Has it happened to you to have much practice among insane persons, or any knowledge of their treatment? Not much; what I know upon that subject has

* I had intended to give an excerpt from this case; but I must have sacrificed other matter of a more instructive nature, in order to make room for it. It is given in the *State Trials*. See the *Principles*, page 429.

† Report of the Committee. This article refers more strictly to *medical police* than to *forensic medicine*; and has, therefore, no direct reference to the *Principles*; but as an elucidation of certain points connected with medical evidence it will be found important.

been principally derived from visiting *Bethlem* occasionally. The late surgeon was a friend of mine, for whom I officiated sometimes. — Will you state to the committee any thing that occurs to you upon the treatment of those persons? I have not any particular observations to make on the subject. — Were you often at *Bethlem* professionally? When I have been there, it has been to see patients under *Mr. Crowther's* care surgically; not on account of *insanity*, but when they happened to be the objects of surgical attention. — Have you ever made any remark as to the care and treatment of patients in *Bethlem*? I could not help observing the management of them; but I had no object in view in observing it particularly. — Were your observations upon that subject particularly directed to the entire want of classification, and the situation of persons who were in the common rooms, the number of persons that were chained against the wall together? I have observed that a number of persons in different states have been mixed in that room indiscriminately; some not violent, and some in a state of great bodily irritation. — Did you ever see a person there confined by the name of *Norris*? I do not recollect that I did; though I must have been through the hospital many times while he was there: I have since heard of him, but I suppose he may have been kept rather secret, and not so much shewn as other persons were. He is dead; I examined his body after his death, but I do not remember ever having seen him while he was alive; and I think I should have remembered it if I had seen him, from the peculiar way in which I have understood he was confined. — What did he die of? He had a very considerable disease of the lungs, a consumption. — Did he die of a decline? Yes. — Is it your opinion, that the manner in which he was confined may be considered as having hastened his death? I am not sufficiently aware of the precise manner in which he was confined, nor of his state previous to his death, to give any information on the subject. — He was confined in a square room in which there was no glazing to the windows, and you know the manner in which he was caged; under these circumstances, should you not think a person, having a tendency to that disease, would be considerably injured from the manner in which he was treated? I have seen so little of him, that I do not imagine I could give the committee any positive information, or any thing satisfactory, any more than a general surmise or opinion, which any person can form as well as myself; the patient I saw most of, was a patient of the name of *Mathews*. — Did you attend *Mathews* any considerable time? For a considerable length of time; first in *Bethlem*, and afterwards when he had been removed to a private house at *Hackney*. — What was his disease? An abscess in the loins. — Had he been subject to that disease for a number of years? It took place a few months before his removal from *Bethlem*; I happened to attend for *Mr. Crowther*, and was called on to see a tumour on his back, which was the first he had perceived of it. This might be six or seven months before he left *Bethlem*. — Did you ever see him before he was under restraint? At the time I saw him, he was not personally confined; he was in a room: I think he was never under any personal restraint when I saw him. I remember to have seen him some years before the time I now speak of; then he was in a different part of the house, and not personally confined. — He was a very quiet, tractable person? Perfectly so, all the times when I have seen him; very gentle and quiet in his demeanour. — He was part of the time confined in one of the rooms that opened into the gallery? Yes, that was a long time

ago; it must be some years ago*.—Did you ever see a person there of the name of *Hurst*? I do not remember it; if I have seen him, I do not remember the name.—Have you lately visited *Bethlem*? I have been there within a month.—Has any alteration taken place in *Bethlem* in the last month, from what it was six months back? I am not aware that any alteration has taken place. When I have been there latterly, it has been to examine one or two patients ill; and I have not attended to the general state of the hospital.—I believe you opened the body of a person who died of constipation, about a twelve-month back? I did not open the patient alluded to. I remember hearing that a patient died in the state mentioned, but I understood from *Mr. Crowther*, that his body was opened by another gentleman of the name of *Langstaff*, a surgeon, in Basinghall Street.—Did *Mr. Crowther* mention any thing as to his having died for want of medicine having been given to him in time? *Mr. Crowther* mentioned some circumstances of that kind.—The committee are to understand, that *Mr. Crowther* told you, that if he had had proper medicines given him he would not have died? That was the purport of what *Mr. Crowther* said to me. This happened more than twelve months ago; perhaps it might be more than two or three years. I understood *Mr. Crowther* to mention, that the bowels had been burst in consequence of the accumulation of the contents; but that is a fact to which the person who opened the body can speak.

Mr. George Waller† examined. Is it your practice now to make every person that is not confined by illness, or in a state of extreme violence, get out of bed and dress himself? Yes, I go round and see it done.—

Do you not believe, that the enabling the patients to look out at the windows in the *New Bethlem*, would be a considerable source of amusement to them? I am convinced of it, because many of the patients said they had heard they were so constructed, and that they hoped it was so. They asked me whether it was so or not; but that it was a great pleasure and amusement for them to look out.

Whether you do not conceive that the cheerfulness in the patients is occasioned by their now being clothed like other people? Yes, decidedly so.—Whether you do not conceive that a pump of fresh water, in every area at a madhouse, must conduce to the cleanliness, health, and comfort of the patients? Yes, essentially.—Whether you would not strongly recommend, that all beds used by male patients should be, when made, thrown open, and so kept till they are used? Yes, certainly.

Mr. George Langstaff examined. You are a surgeon? I am.—Did you examine the body of a person who died some time past in *Bethlem*? I have been in the habit of examining a number of bodies, or the greater number of those who died in *Bethlem*, for *Mr. Crowther*.—Do you remember the case of a particular person who died of constipation? I remember one case, but the name of the person I am not acquainted with, nor am I with any hardly that I examine; but I recollect one case, where the person appeared evidently to have died

* See the curious case of this singular maniac, in *Dr. Haslam's* "Illustrations of Madness."

† Steward to the hospital.

in consequence of retention of fæces, or long constipation. — Do you remember *Mr. Crowther* making any remark to you, as to the circumstances of that person's death? I do not recollect any thing at present; but in general, when I inspected for him, when he was not present, he was desirous of knowing the morbid appearances, and I then gave him the appearances which presented themselves. — Do you recollect an expression being used, that the gut was so charged with the fæces that it was near bursting? I recollect that, that the distention was so great, inflammation was the consequence and mortification; and the fæces partly had got into the cavity of the abdomen. — Did *Mr. Crowther* mention any thing to you as to the cause of that? No; I do not recollect any thing. — Do you recollect his having said any thing as to that person not being furnished with medical attendance? No; I recollect he expressed his sorrow he could not be present; he was very desirous of knowing the circumstance, and he said that it was in consequence of his not having purgative medicine; he did not mention it as attributable to one person or another. — Do you recollect enough to remember that *Mr. Crowther* was particularly anxious, and stated that the neglect lay somewhere? Yes; but he did not mention who was the person in fault. — But that the death of the person was caused by neglect? No, I do not know that he said that. I had formed my opinion, that the person might have been saved, if the bowels had been attended to; that there was not sufficient cause for the death any where but in the intestines. — Did you know that medicines had not been administered? No; but from the appearances I naturally concluded there had been some neglect. — Did you open the stomach? Yes, and every part of the body. — Was there any appearance of medicine remaining in the stomach? That we cannot tell; the whole alimentary canal was so affected, in consequence of the retention of the fæces, it was impossible to tell. — Your impression at the time seems to have been, that medicine might have saved the life? It is a natural conclusion that the bowels might have been relieved. — Are cases of constipation frequent? I believe the bowels of insane persons are more likely to be affected with costiveness, and not so easily acted upon. — Do you examine the bodies dying in *Bethlem*? Not in all cases; I have generally been called by *Mr. Crowther* to open the bodies, where there was any thing out of the ordinary course. — Did you examine the body of *Norris*, who died in February last? No; the man I last examined, was from the bursting of a blood-vessel. — When they send for you, do you attend gratuitously? Yes; I was intimate with *Mr. Crowther*, and, knowing he was infirm, and at some distance, I attended directly they sent for me. — Have you very lately been called in to assist persons that had been ill in *Bethlem*? Yes; on any accident, or any thing which happened, *Mr. Alavoine* sent for me, or my assistant went for me. — It is a matter of common occurrence, that you, or some person with you, should be called in to assist the patients, in case of any urgent case? Yes, in any urgent case I have been used to be called. — Have you frequently assisted *Mr. Crowther* in cases of dissection from *Bethlem*? Yes. — Have you seen any other instances of constipation, where that might be the cause of death? No, I do not recollect any other. — Do you recollect saying any thing as to the propriety of giving medicines in the case you have referred to? I remember saying to the keeper, that it was a great pity he had not had purgative medicine administered to him, that that might have saved him. — When you attend to visit

the hospital, there being no resident medical person within the walls, in what way are you remunerated? Not in any way; I never thought of remuneration; I thought it my duty from charity. — It is your impression, that, at the time, it would have been much better if the man referred to had had some medicine given to him? Undoubtedly. — Do you consider that his life was lost in consequence of the want of medicine? If the question is pressed upon me, I must say, that I think his life was lost in consequence of the retention of the fæces. — As you have frequently assisted *Mr. Crowther* in the dissection of bodies, where does the operation take place; is there a room provided for the purpose? No; I have frequently been there, when I have been at the risk of getting my death of cold; it is a kind of cellar, with the gratings open upon us. — Not in sight of the patients? No. — Is it possible to ascertain, from the accumulation of the fæces in the intestines, how long it might have been there, without any passage? I should think three or four days, or a week, perhaps. — * * * *

Elizabeth Forbes (the matron,) examined. You found some of those clean who had been confined as being dirty? I found some of those that I found in the side-room, able to walk about, and therefore, did not consider it necessary to keep them here. — Do you consider the number of dirty patients, since you have been in your situation, and made that alteration, considerably lessened? Yes; they look better, and they look more healthy from walking about. — They are also more cheerful? Yes, some of them. Wherever I see one that I think will admit of walking about, I always let her. — And it has generally answered? Yes, it has. * * * *

Mr. John Haslam examined. — You are apothecary of the hospital at *Bethlem*? I am. — How long have you been in that situation? I was elected in the year 1795; I have been in that situation nearly twenty years. — What number of inhabitants have you in the hospital now? I believe there are about 122, within one or two. — What number of keepers are there to those patients? There are two female keepers, and there are five male keepers, two of whom, in rotation, perform the offices of cook and cutter. — So that there are only three in constant attendance as keepers? Of the males, and two of the females. — Are you of opinion, that the five who perform the duty of keepers are sufficient for the attendance upon 121 insane persons? That will depend very much on the state of violence in which such patients may be. — Take them generally, from your experience of twenty years? At some times it will be insufficient; at other times, quite enough: I think there are enough, taking the present state of the house. — How many persons are there now under personal restraint? That I cannot tell; I think there are fewer persons now under restraint than I have recollected for some time. — Does not it occur to you, to be necessary to know, from day to day, how many are under restraint? It does not; a person is confined sometimes in the morning, and sometimes let loose at night; others are confined at night, and let loose in the morning. — Have you been round the hospital to-day? I have, this morning. — Do you think the number of female keepers sufficient? When there occurs any refractory state of the ladies, the men are obliged to assist. — The answer you have given, applies to the present state of the hospital; suppose instances where the whole numbers are not sufficient, what further assistance is obtained? We have no more, and we are obliged to do as well as we can with that number; that is

the extent of our power.—Whatever the necessity may be? Yes.—In those cases of necessity, has any application been made to the governors, setting forth the want of additional help? I do not know that it has.—In the twenty years that you have known *Bethlem*, has that necessity often occurred? We have now but half the number we had formerly.—Had you more keepers when you had greater numbers? We had.—Since the reduced number of patients in *Bethlem*, have you ever wanted that additional help, and made an application to the governors for it? I do not know that there has been any actual want: greater industry, and more work on the part of the keepers, has supplied additional duty and additional requisition.—You cannot tell the number of persons under positive restraint? No, it is so uncertain.—How many were under restraint when you went round this morning? I should think, among the females six; and among the males, I think not more than four.—What is the nature of the restraint they were under? I should divide the subject into restraint and coercion: the ultimatum of our restraint is manacles, and a chain round the leg, or being chained by one arm; the strait-waistcoat, for the best reasons, is never employed by us; if a patient will not walk, the driving him to walk I call coercion: if he will not go into the bath, he is driven, or compelled, and coerced to go into the bath.—Those patients under coercion have no irons? They have not.—How many of the patients under restraint this morning were chained? I think the number I have stated.—Are you of opinion, that if a greater number of keepers were allowed, the necessity of restraint would be less? I do not think so, by any means.—Are not you aware, that in many of the private establishments in the kingdom, there is little or no restraint used? As far as I have seen of the private establishments, there is more restraint, a great deal.—Where are those? All the private establishments I have seen, and I have seen most of them; I have seen those at *Liverpool* and those at *Manchester*. Have you ever seen the Retreat, at *York*, or the house of *Mr. Fox*, near *Bristol*? No.—Were you ever at the house of *Mr. Finch*, at *Laverstock*, near *Salisbury*? No.—Did you feel confident, from a very general inspection of private houses, that there are a greater number of patients under restraint in those houses than in *Bethlem*? That is my judgment, and it is the opinion I have formed; I cannot take upon myself to state as to numbers, but as to general impression.—How are the hands secured; with chains? A manacle, I presume, is a means of confining the wrists, leaving the fingers at liberty, but rendering them incapable of separating their arms for the purposes of effecting violence.—Might not violence be effected by both the hands? No, you cannot be afraid of any man so secured.—You think that the hands so secured with irons, is less objectionable, than when secured by a strait-waistcoat? A thousand times.—Can the patient move his hands to his face? Certainly; it is merely a security round each wrist.—Is he not capable of striking another person with his hands secured with irons? The hand put up, even of a timid person, would prevent it.—Is he not capable of striking at another person that may come in his way? Not to hurt him; he can strike him, but not to hurt.—Then it is your opinion, if a man is hand-cuffed in the manner already described, a man of common bodily strength, such as is fit to be a keeper, need not be afraid of injury, from the most outrageous maniac? As far as his hands are concerned, certainly not.—Of what other species of injury need he be afraid? He might use his feet to kick.—Is it probable that a man's life would be in danger, or that he would be in danger of being over-

powered, by any such exertions as those? I think certainly he might. — If his legs or feet were confined in the usual manner, by footlocks? Then he would be an *innocuous animal*. — What are the disadvantages you conceive attending on the use of a strait-waistcoat? The hands are completely secured; if the strait-waistcoat be tied tightly, respiration is prevented or impeded; and it is always at the mercy of the keeper, how tight he chooses to tie the waistcoat. If the patient be irritated by itching in any part, he is unable to administer the relief by scratching; or if troubled with flies, in hot weather, it is a painful incumbrance; and, if not changed, is liable to absorb a great deal of perspiration, which renders sometimes the skin excoriated. He cannot wipe his nose, and he becomes a driveller in consequence: he cannot assist himself in the evacuation of his urine, or his fæces, or possess personal cleanliness, as long as the strait-waistcoat is applied. Then there is another very curious effect that has resulted from keeping on the strait-waistcoat for a considerable time; on every human hand, accustomed to use the organ of touch, the sentient, or palpitating extremities, or tangent extremities, are deadened, as to their sensibility, from want of use; the nails are pinched up, and I have seen some instances, where patients have been long kept in the strait-waistcoat, where the nail has resembled the claw of an animal; so that I can pretty nearly judge by the look of the hand of a lunatic, if I do not see his face, whether he has been the subject of a strait-waistcoat a long while. * * *

Do you think that cases can often occur in which it can be necessary to confine a person, either in manacles or in a strait waistcoat, till such effects shall have been produced? Yes, if the necessity continued. I have seen a patient continue with unabated ferocity, for more than twelve years, with unabated malevolence, and where the necessity for coercion existed the whole of the time. — Sufficient to require either the manacles or the strait-waistcoat? Sufficient to require that sort of coercion that should prevent his doing mischief. — Is that degree of insanity which requires such a degree of coercion as has been usually applied by the strait-waistcoat, known often to last for such a period, as that when the strait-waistcoat is applied, such effects as you have described are known to occur? Certainly, it does not frequently occur. * * *

* * * Is there not, in the books of *Bethlem*, a minute, entered by the governors, and signed by some of them, in which there is a narrative of the case of *Norris*? There was, after the case of *Norris* had made some noise, a committee assembled, convened by the president and the treasurer of our hospital, inviting all those members of the Lords and Commons who were governors of our hospital, to the investigation of the case of *Norris*; and the subject was gone into by them, and a report prepared thereon. — Was that report made? That report is in existence in the books of *Bridewell*. — When did that investigation take place? I think it was last June. — You say that was about the time that a noise was made about the case of *Norris*? The public papers abounded with it. — Is there not a minute entered in that book of the hospital, some years back, in which the reasons that were supposed to warrant the nature of the confinement of *Norris* are entered? That minute is therein recorded, speaking of the report. — That is to say, the report that you suppose was made last June contains within it the minute to which the committee allude? It does. — There could be no objection to produce a copy of it? I should conceive, not the slightest objection; there is nothing to require

a moment's secrecy.—Can you state what were the circumstances that led to the alteration in *Norris's* restraint? It was mentioned to me by the servant, that the iron which encompassed him did not answer the purpose, for he could get his hands out of it; and immediately, on such representation, I desired it might be taken off; and, that there might be no doubt of the order being given, I wrote it down; and a copy of that order, written by me, forms a part of the record in the report I have mentioned.—Did that arise entirely from the representation of a keeper only? Certainly; the thing being inefficient, of course was taken off.—Then, in point of fact, the alteration in the restraint upon *Norris* arose from the restraint being inefficient? It having been represented to me, by the keeper who had the care of *Norris*, that he could get his arms out, it no longer became a security; I accordingly gave him an order to take it off immediately.—Then you are understood to say, he had been under that inefficient restraint for twelve years? I do not say that, by any means.—Then how long had *Norris* been under that inefficient degree of restraint? That I cannot tell.—Can you form any recollection of the time; was it a year? More than one, two, three, or four years, certainly. You will be able to collect the precise time, from the date of the resolution of the committee that he should be so secured, connected with the order for the release from it; that will give the time, but that time I do not recollect.—Then your answer is, that *Norris* had been under the same degree of restraint from which he was released, for several years? Certainly.—And the discovery that it was insufficient was not made till a noise was made about his case? No, I did not say that; I say the meeting to inquire into it was the result of reports that had gone abroad and appeared in the papers.—Was the order for the release of *Norris*, so signed by you, given prior to those gentlemen visiting *Bethlem* who drew the picture of *Norris*, and who found him in the situation in which he was? I never saw any picture, or knew of any picture being drawn; nor did I know of any visitation having been made when this apparatus or restraint was taken from him. He was confined by a chain round the neck, and a cord affixed to a stanchion, which is an iron bar.—In consequence of whose report was it that the order was originally given to confine *Norris* in that manner? When he had committed various acts of desperation, I suggested that he should be confined in a double cell; that this man, being the most mischievous patient, perhaps, that ever I saw, should have two cells, a door communicating between them, so that he should have a sitting-room and a bed-room; he should go into his bed-room without his clothes; that would enable the keeper to clean out the sitting-room, and to examine daily his pockets, to see that he had no offensive weapon, or any thing with which he could do mischief; that when he retired from his bed-room into his other room, the keeper would be enabled to ventilate and sweep the bed-room. This was my proposition, and this forms part of the report alluded to. This was overruled, and the present apparatus—by whom contrived, I do not know—was exhibited, and its imposition agreed on.—This was the advice you gave to the then committee? Yes; and that forms a part of the report alluded to.—By whom was that advice of your's overruled? I cannot say that it was overruled; they did not consent to it.—It was overruled by the governors? By some existing committee, at that time, to whom it was proposed.—It was overruled by the committee to whom it was proposed? Certainly.—Who composed the committee to whom that advice was given by you? I cannot tell,

after a lapse of fifteen years.—How many governors? It was an open committee; and sometimes it is one half-dozen and sometimes another. — As this was a very remarkable case, did not it make any impression on you; did not the circumstance of his case, coming before the committee, make a greater impression upon your mind than the case of any ordinary patient? Certainly; and therefore I proposed additional security, which was what I had the honour to submit to the committee, of his having two cells.—And that proposal was overruled by the committee. Of whom was that committee composed? That I cannot tell. — Will it appear upon the minutes, of whom the committee was composed, in which *Norris's* case was discussed? I cannot say whether the clerk made a minute of that. When this apparatus was fixed on him, I took care that a minute should be made, that I might know who was present.—Do you know by whom the plan of confinement was devised, to which he was afterwards subjected? Not, certainly; but I did hear, as a matter of report, that they had some dangerous man in *Newgate*, for whom the iron had been made, and this was brought from there; but it is mere report.—Did you approve of that mode of confinement? My other proposition being overruled, this, for reasons which ought to be explained, and that form a part of the report, that it met with the concurrence of *Dr. Monro* and the medical officers.—Among whom was *Mr. Haslam*? Certainly.—Then you mean to say, that the plan of confinement by two cells being disapproved by the committee, no other, or better mode of confining the patient, than that which was adopted, was recommended by the medical officers; but that they consented to, and approved the adoption of that which has been already alluded to? I have no great genius myself for any contrivance of this kind. It is recorded in the minute, that the physicians and medical officers approved of it. I presume that is correct.—They approved specifically of this mode? The apparatus was brought into the committee-room, and exhibited.— * * * * *

Have not you had much experience in the confinement of maniacs? Certainly.—Do you conceive yourself capable of contriving a handcuff from which a man should not be able to extricate his hands, even though they should be formed as *Norris's* were? No; I have no contrivance of that kind, nor do I know of any that would have answered.—Was the strait-waistcoat ever tried upon *Norris*? It was.—For what reason was it left off? It answered no purpose; he burst it to pieces.—Do you know of any contrivance attempted for securing *Norris*, other than those which have been described already? None, with the exception of the two cells, which were proposed, and not adopted.—Do you mean to say, that a strait-waistcoat could not have been made of sufficient strength to have prevented *Norris* from extricating himself from it? That is a question I cannot answer.—Do you believe that a strait-waistcoat might not have been easily constructed, of so much strength, as that *Norris* could not have burst it open? I cannot tell.—Do you know for how long a time was *Norris* confined to his bed, manacled in the manner already described? I have previously said, I could not judge of the exact time.—Do you think that his confinement in that manner, during the whole of that period, was necessary? Certainly.—At what intervals were you accustomed to see *Norris* during those years? Frequently; very frequently.— * * * * *

Do you know, or believe, that the report of the keeper, in consequence of which *Norris* was released from that species of confinement in which he had been so long kept,

was made to you before the visits which took place to *Bethlem Hospital*? I know nothing of the time when the visits take place. — Before the case of *Norris* became the subject of common conversation? I really cannot tell. — You have been asked, whether you know, or believe, that the report of the keeper, in consequence of which *Norris* was released from the species of confinement in which he had been so long kept, was made to you before *Norris's* case had become the subject of public conversation? That the keeper can tell, better than I can. — You are only asked, whether you know, or believe, it was before those visits? I cannot tell. — Do you know, or believe, that the report of the keeper, in consequence of which *Norris* was released from that species of confinement in which he had been so long kept, was made to you before the visits which took place to *Bethlem Hospital*? I cannot connect dates in my recollection, in that way. — Have you really no belief on the subject? I cannot say that I have a belief on the subject; I cannot fix the epoch of the public conversation any further, than from reading something of it in the newspapers. — Have you any belief on the subject, or not? I have not. — The committee are to understand, you have no belief or opinion on the subject? I have not sufficient recollection to found a belief on. — Have you no impression whatever upon your mind, arising from any circumstances which then happened, respecting the time at which the keeper made that report to you, as to *Norris's* clearing his hands from the instrument of confinement? I state directly, that I was impressed only with the insufficiency of the apparatus; that was the only impression on my mind. — But the period in which that impression was given to your mind, you do not recollect? I do not. — And you will state to the committee, that it was perfectly, and entirely unconnected with the discussions then going on by the public, on the subject of *Norris*? Certainly; and that question forms a part of my evidence, in the report to which I have alluded; and you will find it is there put, that I had not been influenced in the removal of this, by any visitation which had been made to *Norris*, then under a state of confinement, but was the result solely of the report of the keeper, that the thing was insufficient. I should presume, that the fact of his liberation from this apparatus was subsequent to the public discussion on the subject. — You have said, that you visited *Norris* frequently, during the nine years? I did, very frequently. — Was there nothing in the manner in which he was confined, that led you to apprehend that he ought to be released from it, as soon as circumstances would permit? If his ferocity had abated, he would have been released. — Was there nothing in the manner in which he was confined, that led you to apprehend that he ought to be released from it, as soon as circumstances would permit? Certainly. — If his hands could have been confined by the ordinary manacles, would you have seen any necessity for confining him in the mode to which he was subject? Undoubtedly not. — What is the use of the ordinary manacles? To prevent the hands being separated, as I have previously explained, for the purposes of violence; each hand being used separately. — Was the belt round his body, to which his hands were attached, conceived to be sufficient for the purpose of confining them, when it was first put upon him? The contriver of it must have presumed so. — Did the medical gentlemen who consented to its imposition think so likewise? I presume they must. — Then for what purpose was the additional neck-collar and chain introduced? For additional security. As far as I can state, the neck-collar had existed a considerable time previous to the frame-work

for the body; the collar was anterior, and the frame-work for the body, subsequent: that I am pretty confident of. — When you applied that species of confinement which answered the purpose of the manacle, which you have stated, along with footlocks, to be sufficient to keep in subjection the most outrageous maniac, rendering him an *innocuous animal*, why did you not remove the chain which was fastened to the neck of *Norris*, it then being, by your own statement, no longer necessary? The priority of one being put on before the other, I think, explains it.

Veneris, 12^o die Maii, 1815.

The Right Honourable GEORGE ROSE, in the chair.

Mr. John Haslam was again called in, and stated that, doubting the accuracy of the information he gave, with respect to his approbation of the apparatus in which *Norris* was confined, on a reference to the minutes, it appeared that the words were as follows: — “Ordered, that he be put in the iron apparatus prepared for him, and approved by *Doctor Morris* and the committee, under the direction of the medical officers;” and stated, that it did not appear to him to follow from the minute, that his approbation was given. After which, he was further examined as follows:—Do you then think, that your opinion was not asked? That I do not recollect. — What is your opinion of your own duty in such cases? Having previously recommended the two cells, my opinion finished there. — What is your opinion of your own duty, with respect to giving advice to the committee, on the mode of confining the patients? If it is necessary to consult them, I do so; having previously stated, that the ordinary mode of confinement is by handcuffs and by chains round the leg, it is not necessary to consult the committee, when it is thought proper to put on restraint—they confide that to their officers. — Among whom you include yourself, of course? Certainly. There is a law of the hospital, that no patient shall be put into irons, (those are the words,) or be released therefrom, without my consent. — Do you recollect any other instance, and if any, how many, of patients in *Bethlem Hospital*, being confined in such a manner as *Norris* was? None.—Do you think that the committee would order a mode of confinement totally new, and so apparently coercive, as that in which *Norris* was placed, without consulting that officer to whom the usual direction of confinement in irons was confided? I cannot say what they might do; I cannot answer for the conduct of other persons. — Do you recollect who that committee were? No. — Do you recollect either of how many, or of whom that committee existed? Neither one nor the other; it is an open committee, frequented every Saturday, by different persons.—Is not the number always entered on the minute-book? Certainly; the names of the persons attending are always entered in the book. — Can you say whether, after all that has passed, you are not in possession of the number of the committee, giving the order for this apparatus to be put? No; I am only in possession of this report.—You have before you drawings of *Norris*, in his state of confinement; do you admit, that they are a correct representation of the manner in which *Norris* was confined? I think, the apparatus is all correct. — Do you wish it to be understood, from your late explanations, either that you did, or that you did not, approve of the mode of confinement then ordered? I preferred the two cells. —Do you wish it to be understood, from your late explanations, either

that you did, or that you did not, approve of the mode of confinement then ordered? I cannot recollect; I should presume, having preferred a different mode, that I could not approve any other than the suggestions of my own mind.—Then you rather imagine that you did not approve it? *I should be very sorry to put it as a matter of imagination*; I infer, I did not approve it.—Do you infer, or apprehend, that so not approving, you made any objection? I do not recollect any such circumstance.—Do you apprehend, that if you had objected to it, as an improper mode of confinement, the committee would, nevertheless, have adopted it? That I cannot tell.—Do you recollect any instance, in which, having remonstrated earnestly against any new mode of confinement, or other treatment, to be applied to any of the patients, the committee ordered it to be put in execution, notwithstanding such remonstrances on your part? I never have made any such remonstrances.—Do you apply that to the present, or to any other case, or to all cases? To all cases.—Then is it to be supposed, that you did not, in the present case, make any such remonstrance? The supposition does not reside with me; it may reside with other persons.—Does the answer apply to the case in question? Having made no remonstrance, this being a singular instance of such coercion, I have had no occasion to remonstrate against that which did not exist. As to the present case, I say my recollection does not furnish me further, than that the natural inference to be deduced from that minute is, that it does not appear that my approval either was asked, or that I interfered at all about it: I had another mode, that was not adopted; this was put in execution.—Then do you, or do you not, mean to say you made any remonstrance in the present case? I have said I do not recollect.—Do you recollect that you have made any remonstrance at all, and yet, are uncertain whether you did it in the present case? Never having made a remonstrance, there being no necessity for such remonstrance, this being a singular instance, it is impossible for me to recollect; it is a matter of inference.—Have you been since of opinion, that that mode of confinement was proper? Yes, certainly.—What do you conceive to be the object of a practitioner, in lunatic cases? He must have various objects.—Do you conceive it to be the object of the practitioner, in lunatic cases, rather to remove the disease than to irritate the sufferer? Certainly.—In what light do you conceive that coercion should be considered? As a salutary and protecting restraint.—Are you of opinion, that no protecting restraint against the violence to be apprehended from *Norris*, could have been invented, more salutary, and less irritating to the patient, than that which was inflicted? The two cells.—No other? I have no genius for such contrivance myself. You are simply asked, whether you believe that the confinement in which *Norris* was placed, was the least irritating, and the most salutary which could be devised, after the rejection of the two cells? Perhaps this was the second best.—Do you believe that it was the second best? According to my present knowledge, it was.—How long was *Norris* confined in these irons? Nine years.—Do you mean, that he was never out of those irons, for the whole nine years? They were never taken off, I believe; I do not know that they were ever taken off: if the keeper took them off, it was unknown to me.—Did you, during that period, ever make a second attempt to have *Norris* confined in a different manner? No.—Were you, then, satisfied with that mode of confinement, for that period of time? Yes.—Do you recollect at what time the collar was put round his neck? No; it would appear

from the report, that the whole apparatus was put together; but I said at my last examination, that I had something floating in my mind, that the collar was put on first, and the body-iron afterwards. — Do you acquiesce in the truth of the statement of the report, that the neck-collar was put on at the same time with the other irons? I cannot say to the contrary; I have merely floating in my mind, but without any reference to particular circumstances, that they were imposed at different dates. — Do you doubt the statement in the report? I do not doubt the truth of it. — You have stated, in a former part of your evidence, that the collar was put round his neck to prevent his darting forward, to the injury of other persons; is that mode of annoying others unusual? By no means unusual. — Have not you stated, that a patient, foot-locked and manacled, is *an innoxious animal*? I have, when he can be handcuffed. — Did not the belt round the body, to which *Norris's* arms were attached, answer the purpose of handcuffs? They did not secure his hands, because his hands were at liberty; but they prevented him from throwing out the arm: they confined the arm above the elbow. — For what purpose, then, was the neck-collar and chain added? It appears by the report, that they were put on together; I cannot answer that question. The report makes it the act of others, and not of me. — Did you remonstrate against this additional mode of confinement? I do not know that it was additional. — The handcuffs are stated as the usual mode; it is stated, that the handcuffs were not applicable to this person, and for this reason—the belt round the body, to which the arms were attached, was used: why then, was the neck-collar and chain added? I can give no reason for the contrivance at all, not having contrived it. — You have stated what you think to be sufficient; why did you acquiesce, for nine years, in what, by your own account, you did not think necessary? *I have never given such answer*, that I did not consider the confinement necessary. — Did you acquiesce in that extraordinary mode of confinement, as a sufficient substitution for the handcuffs? It does not appear from the report, that I did so acquiesce. — You were asked, “When you applied that species of confinement which answered the purpose of the manacle, which you have stated, along with the footlocks, to be sufficient to keep in subjection the most outrageous maniac, rendering him an innoxious animal, why did you not remove the chain which was fastened to the neck of *Norris*, it then, by your own statement, being no longer necessary;” to which you answered—“The priority of one being put on before the other, I think, explains it?” It appearing from the report, that the neck-collar and body-irons were put on at the same time, there was a necessity for it, and no reason why any part of the apparatus should be removed, as long as he continued in that violent state. — Do you mean to say, that in your opinion there was a necessity for it? I have said so before, always understanding the two cells not having been adopted. — *

* * * * * Do you know whether the treatment of this man, by the keepers, was proper? As far as such treatment came to my knowledge, it was; but his aversion was implacable against them. — Do you know, whether one of those men who usually attended upon him, was, or was not, much given to liquor? The former man who attended him was a very temperate man. — What was his name? *William Howkins*; the second, *Edward Davis*, was certainly, occasionally intoxicated. — Do you mean to say, he was only occasionally intoxicated, and that it was not a frequent and habitual intoxication? His drinking was frequent, but I cannot

say that his intoxication was constant. — Was it frequent? I think, I may say that it was; he was a man certainly, who drank more than he ought to have done, consistently either with his health or his morality. — Was not this man the keeper who represented *Norris* as having taken the shovel from him, and attacked him with it? That was the man. — Do you know that *Davis* was not drunk at that time? He seemed tolerably sober when he came down to me with his head bruised; I do not think he was drunk at the time. — Will you say he was sober, to your belief? It is a difficult question. — Was he under the influence of liquor? Not under the perceptible influence of liquor, when he came to me. — Why did you use the word tolerably sober, if you think he was in any degree under the influence of liquor? I said, not under the perceptible influence of liquor. — Do you think that the habits of this man were such as to render him a proper attendant upon irritable maniacs? He was a very good kind of man when he was sober. — Do you think, that the habits of this man were such as to render him a proper attendant upon irritable maniacs? Taking him upon the whole, he was a good keeper. — Do you think, that the habits of this man were such as to render him a proper attendant upon irritable maniacs? I do not think that any intemperate man ought to be about the insane. — Was this an intemperate man? The quantum of his intemperance I do not know: I have seen him frequently in liquor, and, I think, more so than a man ought to be who is to attend on insane persons. — How long was this man retained in his situation as a keeper, when his habits were such as have been described? He remained till he died. — He was porter? Yes, he was porter subsequently. — How long did he remain in the office of keeper? I cannot tell the date; till the death of *Howkins*, who was porter. — Had he the care of *Norris* long? I think he had the care of him for several years. — Are the committee to understand, that the aggravations of *Norris's* case have been fully detailed? I think so. — Do you know of *Norris* being beaten, or, as they call it, *polled*, by any of the keepers? I do not; I never heard the expression *polled* used before, nor do I know the fact. — Did you never hear of his being beaten by a man of the name of *King*, who was once a keeper, and has been discontinued as such? No, I never heard such a thing. * * *

Case of RICHARD HATHAWAY, tried for being a Cheat and Impostor, at the Surry Assizes. March 1702.*

Elizabeth Willoughby sworn. * * * * * *Lord Chief Justice Holt*. I suppose you have some skill in witchcraft. Did you ever see any body that was bewitched before? My Lord, I have been under the same circumstances myself, when I was a girl, in *Sir Edward Bromfield's* time. — How do you know you was bewitched? There was a woman taken up upon suspicion for it. — For bewitching thee? Yes, my Lord. — Did you scratch her? My Lord, I had no power to do any thing; I flew over them all. — You say, you were in the same condition with this man, and you say you flew. — Did you fast

too? One held me by one arm, another by the other, and another behind, and I flew sheer over their heads.—Woman, can you produce any of these women that saw you fly? It was when I was a child; they are dead. It was in old *Sir E. Bromfield's* time.—What became of that woman that made thee to fly? I cannot tell; I have been well ever since I was married.

Dr. Hamilton sworn.—*Mr. Serjeant Jenner*. Doctor, pray give an account of what you know concerning this *Richard Hathaway*? My Lord, I have very little to say, upon my own personal knowledge; but happening to be at *Sir Thomas Lane's*, when he was brought before him, I heard what past, and I desired *Sir Thomas* to let me try his throat; and I did try it, and found nothing amiss. But at last, I found there was nothing to be depended upon, for there are abundance of legerdemain tricks; therefore, his vomiting pins, and other actions, were not to be trusted to, and therefore there was nothing to be depended on but his fasting; and if you would discover whether he be an impostor or no, he must be locked up in a room for a fortnight, and watch'd. And then I said to the fellow's master, for my curiosity, if you please, I will lock him up in a room a fortnight, and I shall find out whether he counterfeits or no. And he came to me afterwards, and said, Doctor, you promised you would make this trial of my man. I did so, says I, and if I can, I will. I had thoughts of putting him in the garret; but then I considered, if I should put him in the garret by himself, he might die. But at the same time, *Mrs. Davenport* happened to come to my house, and I said to her, I dare trust you with an experiment, for I believe he is an impostor; and I desired her to let me have her garret to put him in, and she consented, and I desired her either to go herself, or send to Long-lane, and buy things for him; and that she should strip him, and see that nothing may be about him, to hide bread, or any thing else in; “and,” said I, “let none come to him, and let one or two of your family sit up with him every night:” and she promised me she would. Accordingly, she bought a bed for him, and other things, and he was sent to her; and the next day they sent me word that he had strange kind of motions: but I said, there is nothing to be depended on as to these things, but I would fain know whether he fasts or no. I have heard of many that have fasted many weeks; but they have taken water, or some such thing, which, though they are very weak things, yet may keep one alive; but none can live without taking something: and if he should live to the end of the seventeen days, without eating or drinking any thing, I should have something to take hold of. They told me,—That is no matter, what they told you. Did you see him afterwards? I was mightily concerned for the poor creature, when I saw him at *Sir Thomas Lane's*, and I was willing to try him.—Did you see him after that? Yes, when he was blind, for several days. And I sent to *Dr. Martin*, and desired the favour of him to call upon me; and I said— * * * Did you see him after he had been at *Madam Davenport's*? Yes.—Did you see him while he was there? Yes; the thing that I depended upon, was purely his fasting. I saw him myself several times, and I could not believe but that he had eat, because his pulse were strong; that was one reason: that I thought he must eat.—Did you see him the last day of the fortnight? I was just going to dinner, when *Dr. Martin* came to me, and I said to him, *Dr. Martin*, let us try every thing: will you go along with me to him? Says he, if I go, he will fall in a passion. But after I had dined, I went and enquired about him, and they told me he had strange motions.—

Mr. Broderick. You say you reject every thing, except that of his fasting? Yes.—*Lord Chief Justice Holt.* Doctor, do you think it is possible in nature, for a man to fast a fortnight? I think not, my Lord.—*Lord Chief Justice Holt.* Can all the devils in hell help a man to fast so long? *Dr. H.* No, my Lord, I think not; and that made me to suspect him.

VERIFICATION OF PREGNANCY.

Case of MRS. MARY HEATH, tried for Perjury, at Dublin, 1743.*

This trial arose out of the celebrated *Annesley* cause, relating to a suppositious child, in which *Heath* had been the principal witness.

Dr. Samuel Jemmatt sworn.—Did you know the late *Lord* and *Lady Altham*? I did.—Was you employed in that family in any capacity, and what? I was employed by *Arthur, Lord Altham*, as his physician, for some years.—Pray, Sir, did you ever attend *Lady Altham*, as a physician? I did attend her ladyship.—Do you remember when she came from England, into this kingdom? I did not know when she came first, but I think, about the latter end of Nov. 1714, *Lord A.* came to my house, in Anglesea street, in a chariot, and desired I would go with him, to see my lady, for he was afraid she had a fever.—And did you go? I went in the chariot, with *Arthur, Lord Altham*, to one *Mrs. Vice's*, in Essex-street, where they then lodged.—And did you visit my lady then? I did, and found her very hot and feverish; and I asked how long she had been so, and my lord told me, (for only he and she and I, were in the room,) that they had been out late at night—whether at a ball, or play, or music-meeting, I do not remember—and he was apprehensive my lady had got cold that way; but I forget whether he said it was at a play, or concert of music, or any other diversion.—Pray, Sir, did you prescribe for her? I did; I told her, I thought a little blood taken away would be proper, and a gentle puke necessary; but her ladyship calling for a basin, I thought she had an inclination to vomit; but instead of that, she made what the understanding women call *long spits*, as if she was with child. I asked her ladyship then, if she was with child; she told me, she had all the reason in the world to believe so. I then asked how long, and she said three months. I asked her ladyship, upon that, if she had been regular; she told me that she had, as any woman living, till about three months before that time my lord came for me. Upon which I altered the prescription I had before given, and ordered such mild medicines, to mitigate the fever, as might not endanger her ladyship, or the infant within her.—Do you remember, whether *Mrs. Heath* lived there with my lady? My Lords and Gentlemen, whenever I was sent for to any noble family, or gentleman's house, my business was to attend what I was sent for about, and I never took notice of any servant†.—Do you

* State Trials.

† In virtue of the Hippocratic obligation.

know whether *Lady Altham* was with child then, or not; have you any other reasons? Upon her telling me this, and examining of her, I had reason to believe she was. I had breakfasted with them before, but I found her countenance change, and she had yellow spots, and livid spots came out upon her; and I felt her breasts, and found they began to grow turgid; upon which I found that she was with child, and that made me alter the prescriptions, that they might not hurt the one or the other.—Do you know whether she went on in her pregnancy? I gave her directions how to manage herself, but her disorder being what we call a *febris ephemera*, which lasted but three days, my wife and I dined with them at a third place; and after dinner, my wife, who saw her condition, went out with her, and returned again in a few minutes; and my lady told my wife — *Court*. You are not to say what my lady told your wife, but only what you know yourself of her being with child. *Dr. J.* But, I say, I gave her directions how to manage herself, and my Lord told me—*Court*. You are not to say what Lord or Lady Anybody told you. Do you believe her to have been then with child? I do.—*Mr. Serjeant Marshall*. My Lord, I must insist that we have, by law, a right to ask that question; in the very chapter of perjury in *Hawkins*, you will see it laid down as a rule, that hearsay evidence, that serves to illustrate what is the proper evidence before the court, shall be admitted.—*Court*. Hearsay evidence may be made use of to introduce material evidence; but when a witness has said all that is material, we shall not admit that.

(Cross-examined.) *Mr. Spring*. As well as I recollect, you said, Sir, that *Lord Altham* carried you to see his lady? He called upon me, and I went into the chariot with him; he did not carry me, I assure you.—Well, Sir, if he did not carry you, you went with him? I did.—You said, I think, that you made an affidavit before *Mr. Cooper*; to what purpose did you make that affidavit? I had given in an examination; I do not know to what purpose.—Do you recollect what you have said there, with respect to the manner and time of attending *Lady Altham*? I believe I might.—Did not you say there, that it was in November? I say so now.—Did not you say, that the chariot was sent for you? I believe not; if the master in chancery put it down that I was sent for, he mistook me, for I remember that my Lord came for me himself; and I will tell you why I remember it: I was then in mourning for *Queen Anne*, and I had only one weeper on when he came; and he came into the parlour, and sat by the fire, till the other was put on.— * * * *Mr. Walsh*. Pray, Sir, how long have you been a physician? I took my degree of doctor of physic in 1711, and I think that is about thirty-three years; I have been twenty-seven years a fellow of the College of Physicians, and an honorary fellow above four years.—*Mr. Spring*. Upon your oath, Sir, are there any rules in your profession, by which a pregnancy can be discerned from a tympany, or any the like disorder? By virtue of my oath, that question would puzzle not only the Colleges of Physicians of England and Ireland, but the Royal Society too.—*Jury*. Is there such a thing as a false conception? Very often, *a mola*, there is.—There is such a thing? No doubt of it.—Are the symptoms the same? Have women grown big with a false conception? They have done it.

Throughout this curious trial, there are specimens of very loose evidence as to the fact of pregnancy; but, as they are not

given by professional people, I shall insert one only, as elicited from a lady, who, at the time referred to, was upwards of twenty years of age, though represented as a girl, ignorant of such matters; and whose account is curious enough.

Mrs. H. Cole cross-examined. Well, Madam, when your mother shewed you this (*soi-disant* abortion) in the bason, had it any figure or shape? It seemed to me to have it.—What figure had it? It had head and limbs, Sir.—Could you distinguish them plainly? It was but very little.—Did you take and examine it? I do believe my mother shewed me the limbs; I did not take it to examine it, I looked at it as it lay there.—Did your mother do any more than shew it to you as it lay? I do not know but she might, to shew the limbs.—Did she take it in her hand? I do not remember that she did.—Did she stir it in the bason? She might stir it with a feather.—Did she, or did she not? I cannot say.—Had she a feather in her hand? I cannot say that she had.—Had it all its limbs? I might see the limbs, and the large eyes.—What did you take it to be, when you saw it first? My mother told me it was an abortion.

PREGNANCY PLEADED IN BAR OF EXECUTION.

*Case of SARAH BAYNTON, tried for stealing a Fortune (an Heiress).
1702*.*

This woman being found guilty received sentence of death, and, in bar of execution, pleaded her belly. A jury of matrons was ordered, who, upon making their appearance, were thus directed.

Clerk of the Arraignment. You, the matrons† of the jury, shall view, and diligently enquire, and a true verdict give, according to your evidence, whether *Sarah Baynton* be with child, quick with child, or not. So help you God.

Lord Chief Justice Holt. You, the matrons, are to consider well the oath you have taken, which is, diligently to enquire, whether this woman be quick with child: if she be with child, but not quick, you are to give your verdict so; and if she be not quick with child, then she is to undergo the execution of the sentence, in convenient time.

About half an hour after the jury came in.

Lord Chief Justice Holt. Are you agreed in your verdict? Yes.—Who shall say for you? The forewoman.—Do you find the prisoner to be with child? with quick child, or not? *Mrs. Johnson.* Yes, my Lord, she is quick with child.—Is this your verdict? Yes, Sir.—And so you say all? Yes, my Lord.—*Lord Chief Justice Holt.* Hark ye, *Mrs. Baynton!* These women, by their verdict, give you longer

* State Trials. † Whose names, twelve in number, are given.

time to prepare you for death; and, therefore, I hope you will improve your time, for the judgment is past, and will be executed soon after your delivery.

PATERNITY.

Case of ALEXANDER WHISTELO, tried at New York in 1808.*

Lucy Williams, a mulatto, fathered a child on *Whistelo*, a negro; and the officers, whose duty it was to relieve the public from the charge of burthens of that nature, prosecuted the defendant before the mayor, recorder, and several aldermen of *New York*. It is necessary to give part of her evidence, for the perfect understanding of the allusions that abound in the sequel.

Lucy Williams sworn. Do you know *Alexander Whistelo*? Yes.
* * * He carried me to a bad house, and locked the door. I scuffled with him a long time, but, at last, he worried me out.

* When was the child born? The 25d January, 1807. * * *
(Cross-examined.) * * * When did you first perceive that you were pregnant? Before his return. — How did you know it? By feeling life. — When did you first feel that symptom? Near two months before he returned. — Then it was one month after he went away? Yes. — * * * Were you always constant to him in his absence? Were you never unfaithful to him, when he was away? I never did when he was at sea. — Had you not a white man in bed with you? I had a scuffle with one once. I knocked off his hat.

[Witness, being pressed, at length admitted the fact that the white man had turned the black one out, and taken his place.]

Of what colour were your parents? My father was white — he was a Scotchman — and my mother was a dark sambo. — * *

Dr. Kissam sworn — who, after examining those parts of the child which particularly indicate the colour of the race, said he should not suppose, judging from the general rules of experience, that it was the child of that black man; but, on the contrary, of one of lighter complexion than the mother. Black persons are almost white at their birth, but change soon after.

How soon is the change generally complete? About eight or nine months; within the year it is complete.

* From the report, published at *New York*. If it be not one of the most instructive cases on record, it is at least one of the most amusing I have met with.

Dr. Hosack sworn. From the appearance of the father, the mother, and the child, and the laws of nature, which he had uniformly observed in such cases, he certainly would not take it for the child of a black man; but would say it was that of a white one, or, at most, of a very fair mulatto.

(Cross-examined.) Has it not some of the features of the negro? If its features, in my judgment, were those of a negro, I should not have given the opinion I did. — Might it not be possible, judging after your reading and experience in such matters, that, in the early stage of pregnancy, the agitation of the mother's mind, irritation, terror, or surprise, might alter, in some degree, the nature and appearance of the child? I am not of that opinion. — What is the period at which a mother becomes sensible of her pregnancy, (as the witness calls it,) by feeling life? From three to four months; but four more commonly than three; at three it very rarely happens.

An attempt was made to procure admission in favour of the woman, by the analogy of Albinos. The witness answered, that their entire appearance shewed them to be exceptions to the ordinary laws of generation.

Dr. Post particularly corroborated the evidence of *Dr. Hosack*; and *Drs. Seaman, Tillury, Moore, and Anthon*, gave to his statements the additional weight of their testimony.

Dr. Secor saw the child at the time of its birth; it was then quite white. From its appearance at that time, and now, he is of opinion that it is the child of a white man.

Dr. Williamson said, if this be the child of that woman, by that man, it is a prodigy; and he did not believe that prodigies happened; though daily experience, unfortunately, proved that perjuries did*.

Dr. Osborne, who, from a long residence to the southward, had had the most ample means of observing all the varieties that these mixtures of race occasion, had never seen any fact that could warrant him to suppose this the child of a black man. He had seen Albinos, but this child bore no resemblance to them. They were always distinguishable by the red dotted iris, and the tremulous movement of the eyes. Never had seen the produce of African parents, with hair such as this. He had seen some with fair, or yellowish hair, but that was peculiar†.

* One of the counsel for the defendant, (*Mr. Sampson*), in summing up, made the following observation on this gentleman's evidence: — "One gentleman says, *emphatically*, that if it is true, it is a prodigy; and that prodigies, he believes, do not happen, though perjuries do." This remark does great honour to *Dr. Williamson*; and evinces correct habits of thinking and observation. By the bye — *summi cuique* — I have seldom met with a happier instance of the play of forensic wit than is afforded by *Mr. Sampson's* speech:

† I knew two white negroes at Lisbon; one of them, indeed, was my servant. He brought the other to me, and said he was his *cousin*. They represented themselves as natives of Angola, and as of black parents. Their complexion was fair, their faces were much freckled, and

Dr. De Witt corroborated the professional testimony already given.

Dr. Mitchill sworn. (The woman, child, and defendant produced.) — From your observations upon those persons, and from what you know of this case, be so good as state your belief, whether that child is, or is not, the child of that black man? It is, then, expected that I should give an opinion touching the parentage of the child— * that I should give my reasons for my opinion * * —If you please: the more so, as the counsel on the other side will probably enquire into them? There are three general rules, as far as I understand, touching the propagation of men, between the white and black race. First, when the connexion has been between white and black, the offspring is a *mulatto*; second, when the child is produced from an intercourse between a white man and a *mulatto*, it is then called a *quadroon*; third, when it is between a black and a *mulatto*, it is called a *sambo*. In the French and Spanish islands, there are more minute distinctions; but, for *more certain information*, witness referred the court to *Bryan Edward's History of the West Indies*. It is told, in a way that meets my assent, that when a rapid succession of intercourse has taken place between a woman and two men, of different colours, twins have been produced, of the opposite colours. — Do not accidental causes sometimes operate a change in the *fœtus*, at, or after the time of conception? Yes. * *

[The witness now goes on to relate, upon the authority of *Azara*, certain changes effected upon animals during conception, which he applies to the case before the court.] He was interrupted when proceeding to observe, — “the woman here swears the black man to be the father of the child.”

Doctor, I am sorry to interrupt you, but it is necessary I should remind you, that the witnesses are only called to give testimony, not to observe upon it. *Witness*. In estimating this case according to the exceptions laid down, and which I have observed are so frequent, and often so widely deviating from the general rule, I conceive that it violates no probability to suppose this child the offspring of the connexion between the woman and the black man. The mother, who knows most of the matter, has deposed to that fact, and it is not in itself incredible. I have, therefore, no hesitation to say, according to the best of my judgment, as the evidence of the woman is positive, and the fact she swears to *violates no probability*, I should, were I in the place of the court, confirm the rule. — Doctor, you must excuse me,—before, you seemed inclined to do the office of counsel—and now, that of the judge.

(Cross-examined.) This case, you say, Doctor, violates no probability. Are we to understand from that, that it is a possible case, or a probable one? or let me ask you, according to your own principles,

their hair sandy. The cousin was marked with small-pox. Both were negroes in form and feature, with woolly hair, flat noses, thick lips, and extremities of the make characteristic of the race. The man who lived with us was so inept and indolent, that we could not retain him.

which is most probable, leaving the woman's evidence out of the question, that this should be the child of a black or a white man? *Prima facie*, I should say, it was a case under the general rule. If I did not adhere to the rule, it would be on account of the circumstances attending the case, which I take to be an exception; for if I have no knowledge of any matters which go positively to contradict the woman's testimony, I should *naturally* lean towards it*.—Do you consider this case as having any affinity with what is called *albinage*? I have not much experience on the subject of Albinos, as my residence has been chiefly in *New York*, where such accidents rarely occur. But I have known instances of negroes turning white, where there was no symptom of disease or sickness.—Have the goodness, Doctor, to relate them.

[Here the witness related three cases. The first was a gradual change, in a black son of negro parents. After he became white, he could bear the heat of the sun less than before; his sense of touch was sharpened; but his flesh was less ready to heal from cuts. His hair changed from woolly to straight. In the two others, white spots made their appearance, without any known cause; and in all, the fair colour was a healthy carnation, and not the dead hue of the Albinos.] *

* * *

As to those cases in which the agency of some external objects upon the mother's imagination, produces an entire change in the fœtus, have you any facts within your own knowledge? There was a man in the city of *New York*, who kept a cow, which cow was a favourite with the wife of the man; but he found it more convenient to kill her than to keep her. The cow affording a larger supply of provisions than was required for family consumption, he sold part, and reserved the rest. Among the parts reserved were the feet. The wife saw them hanging up in a mangled state. It was the first news she had of the death of her favourite cow; and she was so vehemently moved, and so shocked, as to affect the child of which she was then pregnant; and it was born without any arms, and with distorted feet.—Did you ever converse with the father or mother of the child? I did not; but the child is still alive, and there is no doubt of the fact.—Have you examined the child? I saw it once, as I passed, playing with a cooper's shaving knife between its toes. I stopped to enquire, and *was told the story*†.—Is there no other case, ancient or modern, to support this theory: is there nothing in prose or verse? There is a case called the black case, in *Haddington's* poems. He was a lord of session, or other considerable man in *Scotland*. The story runs thus:—There was a man who followed the profession of an attorney, or scrivener, who had a very amorous wife; but he had not leisure to attend to all her

* Then I am bold enough to assert, that the learned witness's nature is not a very *natural* one.

† Surely, American judicature, *outrè* as we are taught to believe it, could not allow this to pass as *evidence*. The whole affair, however, seems to have been so purely *jocose*, that it is almost a pity that the statements could not have been given without the incongruous solemnity of oaths.

gaeties. Once that he was unable to free himself from her "opportunities" in toying with her, he upset his ink-bottle in her shoes. She brought him a black child in consequence. He reproached her, but she reminded him of the ink-bottle, and of his awkwardness. There is also the story told by *Mallebranche*, of the woman who saw a man broken on the wheel, and bore a mangled and disjointed child. If such changes as the last are true, (and there is strong authority for it,) then the mere change of colour or complexion is not difficult to believe.

Mr. Sampson now continued the cross-examination; in the course of which many white animals were alluded to, including men and birds: a flight of white owls once made their appearance, for some time, at New York.

Mr. Sampson then apprised the witness, that since his opinions were likely to be favourable to the side he was to advocate, he must avail himself of the privilege of cross-examination. It would be necessary, with so learned a witness, to say, that the adverb *cross*, was not to be taken in the vulgar acceptation. *Cross* was in contradiction to *direct*; and cross-examination meant only, *indirect* examination*. The ignorant, who take things in the wrong sense, often shew ill humour, and put themselves in attitude to be *cross*, because they are to be *cross*-examined. With the candid and enlightened, it proves often an agreeable mode of discussion, and is particularly so to our profession, when it gives occasion to extract, from those of superior learning, knowledge which we might not otherwise have the means of acquiring. *

* * What do you think, Doctor, of the opinions of *Pythagoras* touching the principles of generation? Do you mean also, to ask me *Pythagoras's* opinion on wild-fowl? Far be it from me, Sir; that question might serve to puzzle a man who was in the dark — mine are meant to elicit light, from a source where it abounds. — *Witness*, (bowing) I do not know, Sir, to what particular opinions you allude. — To his triangle of generation, as well as to the harmonies and mysteries of the number three? I have never devoted any attention to such mysteries. A triangle has three sides, and three angles, if you can find out the mystery of that. — Has not a prism three sides, and three angles? It has. — Could *Plato* have meant that any thing resembling a prism could have an influence in generation? You seem, Sir, to have thought enough upon the subject to judge. — Sometimes, the more we look, the less we see. Can you, upon any principles of plane or spheric trigonometry, produce a triangle which shall be flat on one side and round on the other? That, perhaps, is an Irish triangle; if so, you can produce it yourself. Will you permit me now, Sir, to examine you a little. — O, Doctor, you cannot be serious; not, surely, in the face of the Court! *The Mayor*. I think, *Mr. Sampson*, after the manner in which you have examined the witness, he is entitled to what he desires. *Sampson*. Alas! Sir, I am but a poor tradesman, labouring in my vocation; if I let him wind that long train of causes and effects round me, I shall be so entangled, I shall never be myself again. It is play to him, but death to me. — * * * * * Are you acquainted with a story related by *M. Saussure*, of a lady of quality, of

* See the text, p. 71.

Milan, who had seven sons? I have no recollection of such a story. — It was this : — The two first of her sons, and also the two last, had brown hair and black eyes; the three intervening had blue hair and red eyes. — *Witness*. Very possible. — That is not all. The author accounts for it in this way : — That while the mother was pregnant with the three red-haired and blue-eyed children, she had also conceived a violent passion for milk, in which she indulged to excess. This might, when related by *M. Saussure*, have passed for a traveller's story; but it is adopted by an eminent physiologist, *M. Bozzi*, surgeon of the hospital of *Milan*. * * * *

Do you think it credible, Sir, that *Louis II.*, the king of *Hungary* and *Bohemia*, was born without his epidermis or scarf-skin? It is not impossible. — Yet, for a king to come without his skin, that was coming very naked into the world. What do you think of *Zoroastres*, king of the *Bactryans*? I have never thought about him. — *Pliny* says he came laughing into the world: is that probable? It would be an exception to the general rule, for we generally come into the world crying, and seldom go out of it laughing: so that, as the only time we have to laugh is while we are in it, it is wise to profit by it. — * * * *

Did you ever hear how the mistress of *Pope Nicholas III.* was brought to bed of a young bear? No, Sir; but many women have very bearish children. — After that, I think they may bear any thing. * * * *

I cannot take up more space with these transatlantic flowers of rhetoric. — *Mr. Sampson*, who certainly treated *Dr. Mitchell* more like a *Philistine* than one could wish *, summed up with a still happier display of humour (in which there are many strokes of genuine wit,) than even his questions manifested; and in another place I shall, perhaps, have an opportunity of reprinting the merry oration.

* Should this be doubted, here is a sentence from the concluding address. "LORD BACON, in treating of the period of gestation of various animals, says, gravely, that an ox goes twelve months with young; and DR. MITCHILL, of *North America*, was so impressed in early life by reading the novel of the Christian Bishop Heliodorus, entitled *The Loves of Theagenes and Chariclea*, that he could not see any impossibility in black men getting white children." The Doctor had related this in the course of his evidence. It may pass as an indifferent joke; but with regard to Lord Bacon's alleged absurdity, lest the learned gentleman should be supposed in earnest, it may be as well to remind the reader that the term ox was, in his lordship's time, employed to signify the whole species to which that animal belongs: nor is it yet restricted to a meaning synonymous with that of BULLOCK. Look at the Scriptures, which were translated into English about the time of Lord Bacon's works; and to this day the word is occasionally used with the same latitude. The *Musk Ox*, for instance, brought from *Melville Island*, and now on the staircase of the British Museum, could hardly, with propriety, be called a bull or a cow, being a specimen of the *tribe*.

Case of DR. CASTAING, tried for Poisoning and Forging a Will.
Paris, 1823*.

It may not be unacceptable, to close this Appendix with a specimen of French economy, in cases of judiciary process, relative to matters of a nature similar to those which have been elucidated in some of the foregoing cases. The particular instance which I have selected for this purpose, is too well known to require any introductory notice, for the understanding of its general import. It is remarkable, however, at the present epoch, as involving an allegation of poisoning, almost in an occult manner, by the employment of a substance but lately discovered, and whose powers of action on the living animal economy were not much known; while the means of verifying its presence, or, in other words, of detecting it, were still less so. In this respect it may bear some analogy to the *Laurel-water* case; and sure I am that, if dissatisfaction was well founded in regard to the mode of conducting that trial, it would be difficult to express in words the impressions that must be excited in the same breast, by a perusal of the affair now under notice.

To an English apprehension, nothing can be more hideous than the mode of trial in France. A person, as yet but accused of a crime, (the bare allegation, or mere suspicion of which, would probably disturb the self-possession even of the most *innocent*,) is taken from the gloomy and sedative influence of a cell, to endure a protracted and torturing examination †, so conducted, as to perplex and confuse the clearest and most consummate intellect; and in which, every little variation from former statements, each trifling discrepancy, failure of recollection, inaccuracy as to precise dates, or other immaterial points — in short, every iota of a doubtful or pervertible character, is turned against him. He is not only questioned *directly*, for the purpose of getting him to criminate himself by his answers, but attempts are made, by other means, to entangle him in the meshes of self-accusation. Nothing is construed *for* him; insinuations and reproaches are cast upon him; unwarrantable conclusions are drawn from his statements; and the wonder is, that an unfortunate prisoner should ever escape.

* From the short-hand reports published at Paris, and entitled, "Affaire Castaing, accusation d'Empoisonnement," &c. 8vo. pp. xiv. 264.

† The court sat for five or six hours daily; the judges and counsel going home regularly to their ordinary pursuits and relaxations, and the prisoner, to such *refreshing* sources as he might find in his dungeon. I would have included the jury, but I do not really know whether it is the practice to shut them up from contaminating exposure, or to let them daily loose.

The slender extracts I can possibly introduce here, may not illustrate all these points; but I defy any one to peruse the details of a French trial, without finding proofs of some of them. I believe it may be asserted, that the *procès* CASTAING at large will afford examples of them all.

After an act of accusation, (a very different article from an indictment, being a minute history of every thing connected with the allegations, and fraught with observations and inferences, which an English counsel for the crown would hardly venture to introduce in a speech,) of such length that its recital must have been enough to weary all who heard it, the presiding judge proceeds to interrogate the prisoner, beginning with questions relative to his connexion with the objects of his alleged criminal proceedings. I shall select a few, here and there.

Q. What motive could *Hippolyte* have for refusing to see his sister? I do not know*.—Have you not made *poisons* the object of study? Yes, as belonging to the *materia medica*.—Did you not ask an apothecary some questions concerning the effects of vegetable poisons? I do not remember.—You know, at least, that such poisons leave no traces in the body, and that, in medical language, they may pass in the stream of the circulation. Are you acquainted with that property? Answer? Yes, Sir.

Q. *Hippolyte* died on the 5th of October. A death of such a sudden nature must have surprised you. To what did you attribute it? To some more important accident having happened to the lungs.—That is not your former declaration. You said that he died of congestion of the brain, arising from a fluxion of the breast, which appeared to be the case on dissection? I thought you asked me what my opinion had been, prior to the dissection.—You were present at the dissection, and you are aware that *Segalas* and *Lherminier*, the physicians, stated that some of the derangements in the organs might be caused by certain poisons.

[This was not followed by any remark on the part of the prisoner.]

The examination turning upon the affair of the property, I pass to matters more allied to the scientific merits of the case, in which we shall have ample exemplifications of the nature of French testimony. It would almost seem to be the custom, if not the law, to hang a culprit for making mistakes in criminating himself, or at the worst, for telling lies †.

* A strange idea of the nature of evidence—to ask one person as to the *motives* of another! Who *could* speak to such a point?

Another circumstance, I cannot avoid alluding to, is the declarations of persons not sworn being received—the declarations of the prosecuting parties. See the examination of *M. Martignon*, the brother-in-law of the deceased.

† For example:—The judge says, “Yesterday you admitted that the will had been placed by you in the hands of *Malassis*. Why did you deny that repeatedly at first? Because it was dangerous for me to

The three doctors * acknowledged that certain poisons given, even in quantity sufficient to cause death, may leave no trace, either in the stomach or any other part of the body. *M. Segalas*, one of the commissioners who had unanimously declared that eight grains of acetate of morphine would prove fatal, although no proof had been obtained from the human body, added, that from several reiterated experiments, *fourteen grains had been administered to animals without killing them*. Upon which *Castaing* maintained, that all he had purchased was fifteen grains †.

M. Laennec did not find in the dissection-report any proof of pleurisy, but attributed the death to apoplexy. "Whether," said he, "the cause of this apoplexy be natural or violent, no one can say; the conscience of the jury must be cleared as to that point, by accessory proofs. *All poisons cause apoplexy; and almost all, even in fatal doses, leave no traces*‡. Chemical analysis gives no certain results; and the most experienced chemists are divided in opinion."

Judge. What is your opinion as to the cause of *Hippolyte Ballet's* death? *As a physician, I can say nothing; as a man, had I seen his last moments, such as they are described, I should have suspected poison: I should have procured a dissection; and, before opening the body, I should have thought that the poisoning had been perpetrated by the introduction of some vegetable substance, of which no trace would be found in the stomach. The report, instead of altering my opinion, has confirmed it.*

(*Judge*.) *Castaing*. What have you to say? I have not committed the crime imputed to me; I can look you in the face, (looking at the crucifix,) I can look behind you: it is the gentleman's opinion, and I will submit to it, as also to the decree of the court.

Laennec. I have said, that as a physician, I had no opinion; I have merely said, that I should have suspected poisoning, that I should have made an investigation, and that I was sure no traces of poison would have been found.

In the course of the trial *Jean Leon*, a negro servant of the deceased, *Auguste Ballet*, was examined as to what took place during the last illness of his master, and we have the following paragraph, among others:—

let *M. Martignon* know that I was universal legatee, to his prejudice. But you did more; you declared you did not know who had placed it there. What was your motive? I had no positive motive.—I desire you will explain yourself, and tell the truth? I repeat, I had no motive.—So that, without a motive, you have lied to justice. The acknowledgment of this falsehood cannot be in your favour.

* *Lherminier, Segalas, and Laennec*.

† In this it was alleged that he was not correct, it appearing from the book and deposition of the pharmacien, that he had bought a scruple or 26 grains. The French scruple is 24 grains.

‡ It must have been *vegetable* poisons in the statement, though the report does not say so.

About eleven o'clock *M. Castaing* gave him a spoonful of stuff that had been ordered by the physician. I held the candle, and came close to *M. Auguste*, at the moment when *M. C.* put the spoon in his mouth. All at once, four or five minutes after he had drunk it, he was seized with frightful convulsions, and lost his speech. [*Here the witness endeavoured, by his motions and cries, to imitate the horrible state in which he found his master, and his agony.*] This scene produced the greatest effect on the audience*!!!

* * * * *

M. Orfila, professor of legal medicine, recognised the prisoner as having attended his course. Having examined the *procès verbal*, the witness declared, that certain vegetable poisons might cause the symptoms described in the dissection report of *Auguste*; but that similar symptoms might belong to diseases. *Pernicious intermittent fever* causes the symptoms of hydrophobia, the virus of which is a poison. From these symptoms no positive conclusions can be drawn; conjectures only can be made, while, at the same time, it would be impossible to prove that there had been no poison in the case.

In reply to the judge, *M. O.* stated—

That there were a few vegetable poisons that leave no traces in the parts to which they are applied. The prussic acid leaves none in the stomach when applied to it, but does in the lungs and brain. It might be affirmed that poisons generally did leave traces in some parts. The effects described in the report of the dissection, appeared to him attributable to *acetate of morphine*, as well as to other vegetable poisons, or to sudden disease. He added, that some poisons left no characteristic indications, and that those which followed them might be ascribed to other causes. *Acetate of morphine*, which is a bitter substance, ought to give a very acid taste to hot wine. He could not say whether this substance would acquire activity by being mixed with lime juice, the taste of which might, indeed, disguise it. He conceived that acetate of morphine might produce the three following effects:—

1. The person might die in a few moments, and the poison be carried

* Who will deny the theatrical character of this people, when the pantomimic extravagances of a black menial are gravely recorded as forming part of his testimony, on a trial of life and death, and as having been performed to the *satisfaction* of the audience, (for such is implied,) including, of course, judge, jury, and (probably) the prisoner himself? The counsel for Ballet's family, (*partie civile*), in his address to the jury, seems to have done full justice to the excellence of the performance; for he introduces the following éloge; which, as I could hardly render in English without, perhaps, investing it with the character of a burlesque, I shall leave to take its chance with the French scholar:—"Je n'essaierai pas, messieurs, de remettre sous vos yeux cette scène de douleur, telle que vous l'a peinte le negro *Jean*, le seul témoin oculaire qu'elle ait eu. Son *imitation expressive* ne vous a-t-elle pas fait frissonner? Ne vous semblait-il pas voir l'infortuné *Auguste* aux prises avec la mort, se débattant contre elle, et succombant enfin sous les nombreuses tentatives auxquelles, dans la même journée, il avait été constamment en butte."

into the *course of the circulation*; 2. The poison might be rejected by repeated vomiting; 3. If half a grain of it had remained in the body, it might have been detected in four ounces of medicine. It is one of those poisons which are quickly absorbed; six or eight grains, in his opinion, might cause death. Its action is, first to produce drowsiness, or a particular sleep, then cruel pains, contraction of the nerves, cold sweats, tension of the abdomen (*estomac*), and at last death. No antidote is known. Emetics, purgatives, and the minor acids, may be given to paralyse the effects. Lemonade taken while it is still in the body, adds to the danger. If the poison is expelled, it may neutralise it.

M. Vauquelin, another professor, analysed the liquids found in the stomach of *Auguste*, but found no trace of any poison whatever. It is possible that certain poisons leave no trace, inasmuch as they act only when absorbed. Moreover, a draught containing one grain of acetate of morphine, diffused in four ounces of a vehicle, had been administered to *Auguste* as a medicine; the residue of the draught found in the phial having been submitted to the same analysis, this substance was not detected. The witness declares, but doubtfully, that seven or eight grains might cause death*.

The evidence of several other professional witnesses discountenanced the inference of poison being present; but the proofs, which alone would be adequate to establish such a charge in an English court, were supplied by *cross-examination* of the prisoner, in the strictest sense. For example—

M. Mars, counsellor, to *Castaing*. When *Ballet* was first slightly indisposed, why did you not yourself assist him with remedies? I did not think it was proper for me to interfere. — Was that because you were aware of being universal legatee? No; I durst not, because in the morning I had been to Paris for some poisons†.—(By the Judge.) What! did you suppose that such a circumstance would throw suspicion on you, when the poison was only for the purpose of killing the cats and dogs of the inn? My principal reason was, that I did not think myself so well qualified as another to judge of the state of my friend.—
* * * *A Juryman to Dr. Pigache*. Did *Auguste* tell you, that his legs were inflamed? No; nevertheless, I examined all the parts

* At a future stage of the trial, *Chevalier*, from whom part of the acetate of morphine had been purchased, stated that he had tried its effects on himself, and, in consequence of taking a quantity that had been administered to a cat and a dog without any bad consequence, he was ill for a fortnight. On the effects of this substance, as deduced from experiments made subsequent to, and probably in consequence of, this trial, see *Medical Repository*, for March and June last. Some observations on the case at large, also, are given in the same journal, for January 1824.

† The prisoner had previously stated, that he had gone to town, (from St. Cloud, where *Ballet* was taken ill,) to buy them for the purpose of poisoning some dogs and cats, which had disturbed *Ballet* in the night.

of his body. — *Castaing*. I have already had the honour to say, that his legs were merely swelled by his boots. — *Judge*. I tell you again, that it is not what you said at first. — *Castaing*. As in three-fourths of my examinations both at *Paris* and *Versailles*, there was a certain severity observed in questioning me, and my answers were not taken down as I gave them, it may have been easy to substitute one expression for another!! * * * * *

M. Pelletan, junior, (professor of the faculty of medicine,) reports, in the first instance, what he observed at *St. Cloud*, where he arrived on Sunday, June the 1st, a quarter before six in the morning. *Castaing* ran to meet him, crying, “Ah! is this you? I am very glad to see you; my friend is dying.” As soon as he was bled in the right arm, the blood flowed *per saltum*, and *M. P.* said, “That is rather favourable.” “How fortunate!” cried *Castaing*, “have you any hope?” *M. P.* had several conversations, both with *Pigache* and *Castaing* separately. In one of these *M. Pigache* informed him, that he believed *Castaing* had told him that he was interested in the will of *Auguste*, or even that he was sole legatee. “In another conversation,” said *M. Pelletan*, “I found *Castaing* much distressed, and in tears. He appeared inconsolable for the loss of his friend. ‘I think,’ said I to him, ‘that you are in a fearful situation. You came here alone with your friend, being his sole heir: this friend suddenly dies, and his death is accompanied with extraordinary symptoms.’ ‘You are right,’ cried he, ‘it is true my situation is frightful, horrible. I never thought of it till this moment, I was too much absorbed in grief, but you have opened my eyes. Do you imagine there will be any investigation?’ I replied in the affirmative; I told him that I would myself demand a juridical dissection of the body. ‘Ah!’ said he, ‘you will render me an important service; I beseech you to have the body opened. You will be a second father to me.’ He was at that moment in a state of agitation difficult to paint. I endeavoured to calm him. ‘My friend,’ said I, ‘we will do what is right, and with the greatest care; make yourself easy.’

“*M. Pelletan* then detailed what related to the opening of the body, which occupied five hours. * * * He was obliged to go out several times, and, on one occasion, he saw the prisoner on the stairs, he came to him, and asked what was the result. I answered, ‘My friend, we shall see, nothing is decided yet.’ I asked the *Attorney-General* if he would allow me to go and console *Castaing*, which he did. ‘Well,’ said *C.*, ‘will they let me go?’ ‘I do not know,’ said I, ‘if they are going to liberate you; but make yourself easy, there is no sign of violent death, or of poisoning.’ * * * * *

Q. In the event of acetate of morphine being actually administered, would it not be impossible, even at the end of twenty-four hours, to find any traces of it in the body, if there had been evacuations? It is very probable that no traces would be discoverable, if copious vomiting had taken place after the administration of the last dose. — *A Juryman*. Could the pain of acetate of morphine, contained in the draught prescribed, occasion those derangements which were observed? By no means; besides, in all probability, notwithstanding the declaration of the pharmacist, the grain in question had never been mixed by the apothecary. We examined and analysed the remains of the draught with the utmost care, and could find none of the acetate. Without doubt, had it been present, we should have detected it, for

we had the same draught composed again with a grain of the salt, and, upon analysing it, found the acetate of morphine readily *.” * *

(By the Court.) On examining the stomach at the time of the dissection, do not you say that it was in an extraordinary state? Yes, in a state of *insoufflation*, an emphysema of the mucous membranes. I had never before observed it, which prompted me to take the stomach to Paris, to be examined by *Dr. Chaussier*.—Could that emphysema be caused by poison? I cannot speak from my own knowledge, never having previously seen the phenomenon; but, according to the opinion of persons who are worthy of the greatest confidence, it has no connexion with the action of poison, and sometimes is found in diseases.—Is the idea of its connexion with poison out of the question? No, nothing is out of the question with regard to that idea †.

* * * * *

M. Laennec recalled.—*Court*. The court and gentlemen of the jury wish to have your opinion, Sir, upon a question I shall have the honour to address to you. A man, aged twenty-five, in good health, drinks some warm wine in the evening, in which there is acetate of morphine sufficient to create considerable disorder in the animal economy. Next morning he drinks some milk, in which there is also acetate of morphine; and the same day, towards evening, he takes a spoonful of a draught in which there is still some of this acetate. What ought to be the probable consequences? The witness stated, that the effects of the acetate of morphine were not yet so positively known as to enable him to give a precise answer. Many experiments had been made with it on animals; but accurate conclusions with regard to the human body could not be drawn from these. Besides which, the effects might vary according to the age, constitution, and state of health of the individual. He believed he might warrantably state, that if a considerable quantity of the acetate were administered, and succeeded by vomiting, the effects would be less severe. In the contrary case, the consequences would be more rapid and serious, and would produce death.

Q. Supposing the acetate of morphine to have been given in the morning, would it be possible for the poison not to act till the evening? It is not probable, if given in great quantity, and if there were no vomiting; but, in the event of vomiting, the thing would be more likely ‡.

* * * * *

M. Chaussier declared, that he did not find, either in the stomach,

* It is a common complaint against those who make up prescriptions, that if they possess not the articles required, the receipt is, so-disant, completed nevertheless. The following acknowledgment was drawn from the next witness, *Anselme*, the pharmacist:—*Judge*. Did you not prepare another similar prescription, by order of *Dr. Pigache*? Yes, but it was not for *M. Ballet*.—Who was it for? I was not told.—Did it not contain acetate of morphine? It ought to have done so; but as I had none, I did not put it in!

† Let us apply this proposition a little further, and see the result. Set up AN IDEA (*qui qu'en soit, pro or con,*) and nothing is out of the question with regard to it—a notion utterly inconceivable in justice.

‡ As a mere illustration of the economy of judiciary process, I may

er in the substances submitted to analysis, any vestige of poison, vegetable or mineral; and that inflammations of the stomach are not a proof of poisoning. — *Court.* Is it possible that the derangements you did find, were the effect of poison? No. — You are of a different opinion from several of your brethren? That may be. — You are at variance with yourself; for, jointly with them, you have signed a contrary answer. I ask you again, is it possible that these derangements might be produced by vegetable poison? *A posse ad actum non valet consequentia.* — We are not talking of consequence, be pleased to answer my question? Yes, it may be caused by a poison, vegetable, animal, or mineral. — Can the acetate of morphine be absorbed in such a manner as to leave no trace? Yes, but it requires time, *et primo de corpore delicti constare debet.* — Can death follow when there is vomiting? No, the poison is expelled. — Is it possible to find vegetable poisons again? Yes. — The acetate of morphine? Yes. — But, when once absorbed, it is impossible? Yes, but that requires time. — The answer signed by the witness, in which he declared that the acetate of morphine might not be discovered after being absorbed, was read; and he replied in the affirmative, saying, that in such case the substance employed (*corps du délit*) is wanting. — *Court.* That is a point of jurisprudence that you have no business to meddle with. — [The journal of *Auguste's* disorder, and the dissection-report, were then read.] After the description of the phenomena displayed in the head, the judge asked, if such appearances might be the effect of poison? Yes, and of a thousand other circumstances; of every thing that causes determination of blood. — With regard to the derangements in the abdomen and breast, the same question being put, the witness replied, ‘No, certainly not.’ — Are they exclusively caused by poison? No. — *M. Roussel* having put a question to that effect, the witness stated, that narcotic poisons always cause a prodigious dilatation of the pupil. — *Court.* Has the acetate of morphine that effect? Yes. — You do not agree with *Dr. Orfila*? I have experience that *Dr. O.* does not possess*. *

M. Magendie examined the stomach and liquids, but found nothing of a poisonous nature. In answer to various questions from the bench, he stated, that possibly vegetable poisons might not be discovered, especially if they had been given in small quantity; and that all the phenomena described in the *procès verbal* might possibly be occasioned by a vegetable poison. “I cannot,” added *M. M.*, “conceal an impression that struck me forcibly. I observed that the account of the disorder was absolutely imperfect, and that upon this document it was difficult to form an opinion as to the cause of death; on which ground the dissection-report is not more satisfactory.” * *

Castaing having, among other witnesses to character, pro-

inform the English reader, that the witness who succeeded *M. Laennec*, was an upholsterer, and was called “in virtue of the discretionary power of the judge;” as was also the next. Their statements merely furnished my *Lord* with so many texts for lecturing the unfortunate culprit.

* Some of my readers, who are not unacquainted with the connexion of the French schools of medicine with state politics, may recognise in the foregoing display, something like a relationship to what, in this country, we term *ins* and *outs*.

duced eighteen poor patients who spoke much in his favour, the judge draws the following *humane* inference: —

All these witnesses depose to your disinterestedness; but, from that very circumstance, you must have been unable to support yourself by your profession, and to save money*? These are not all my patients, I have not summoned those who paid me.

Here we shall close by selecting from the address of the prisoner's counsel (*M. Roussel*) the following sentence: —

According to the law of England, when an individual is called to give evidence, he is first asked the question, Have you *seen*? If he speaks merely from vague reports, from hearsay, he is not attended to.

The trial lasted eight days; and though I am far from insinuating that *Castaing* was not guilty of what was laid to his charge, I do assert that, guilty or not guilty, the manner of trying a man for his life, now animadverted upon, tends to heap difficulties in the way of defeating an unfounded accusation, and seems as if it merely afforded an opportunity to the judge, jury, and counsel for the prosecution, of displaying, and practically applying, a preconceived view of the case. Some parts of this process display something rather like baiting at a stake, than solemnly trying a citizen for his life, at the bar of an impartial tribunal.

* It may be remarked, that a good deal of presumption had been drawn from the alleged narrow circumstances of the prisoner, having been an inducement to commit the crimes laid to his charge.

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